

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

TSB-M-05(2)C and TSB-M-05(4)I are supplemented to:

- provide an exception to the tax shelter disclosure reporting requirements if the taxpayer is a partner of one or more large partnerships,
- provide an exception to the tax shelter disclosure reporting requirements for reportable transactions that have been de-listed by the Internal Revenue Service (IRS),
- clarify the reporting requirement of nonresident individuals who participate in a group return for purposes of Article 22,
- provide exceptions to the reporting requirements and the additional reporting requirements for material advisors, and
- announce the expansion of the voluntary compliance initiative to include tax liabilities under Articles 30-A and 30-B of the Tax Law.

### **Exception to the reporting requirements for taxpayers and persons required to file returns or reports under Articles 9, 9-A, 22, 32, or 33 for partners of large partnerships**

For taxable years beginning prior to January 1, 2004, a taxpayer that is a partner of one or more large partnerships may file an abbreviated disclosure statement if the large partnership elects “collective disclosure” by providing a list of the names, addresses, and tax identification numbers of each of its partners, by taxable year, who were entitled to participate in one or more of the partnership’s reportable transactions or listed transactions for those prior taxable years. Collective disclosure may **not** be made with regard to the disclosure statement required to be filed with the IRS for taxable years beginning on or after January 1, 2004. Therefore, for taxable years beginning on or after January 1, 2004, both the partnership and each of its partners must attach a duplicate of the IRS disclosure statement to Form DTF-686, *Tax Shelter Reportable Transactions*. A large partnership may elect collective disclosure for:

- all disclosure statements that were required to be filed with the IRS at any time with respect to listed transactions for which the partnership filed a New York State return (Form IT-204) for the tax year in which the transaction occurred, 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 partnership participated during any tax year for which the statute of limitations for assessment against any partner has not expired as of April 12, 2005. For this purpose, the statute of limitations for assessment under sections 683 and 1083 of the Tax Law in effect prior to April 12, 2005, is used.

To make the election, the large partnership must:

- write **Collective Disclosure** on the top of Form DTF-686,
- complete Form DTF-686, and attach all required tax shelter disclosure information for listed and reportable transactions,
- attach a list of the names, addresses, and tax identification numbers of all partners for each relevant year, by taxable year, who were entitled to participate in a reportable transaction or listed transaction for taxable years beginning prior to January 1, 2004,
- attach completed Form DTF-686 to the first return (Form IT-204) filed on or after June 13, 2005, and
- notify its partners of the election.

To file an abbreviated disclosure statement, the taxpayer must:

- write **Collective Disclosure** on the top of Form DTF-686,
- complete the information preceding Line 2 of Form DTF-686,
- complete Line 2 of Form DTF-686 and attach all required tax shelter disclosure information for listed and reportable transactions that **are not included** in a collective disclosure filed by a large partnership of which it is a partner, and
- complete Line 2 of Form DTF-686 and (instead of attaching the required tax shelter disclosure information for listed and reportable transactions that are included in a collective disclosure filed by a large partnership of which it is a partner) list the name, address, and tax identification number of the large partnership that elected collective disclosure and provide a brief description of the listed or reportable transactions.

In any event, the Department may require a taxpayer to provide, upon written request, all disclosure statements and any related information.

*A large partnership* is a partnership with more than 100 partners as of the last day of the partnership's calendar or fiscal year ending during the last taxable year for which collective disclosure is made. A large partnership includes a limited liability company (LLC) that is treated as a partnership for federal income tax purposes with more than 100 members as of the last day of the LLC's calendar or fiscal year ending during the last taxable year for which collective disclosure is made.

**Exception to the reporting requirements for taxpayers and persons required to file returns or reports under Articles 9, 9-A, 22, 32, or 33 for reportable transactions that have been delisted by the IRS**

A reportable transaction previously identified as a listed transaction by the IRS is not required to be disclosed if for taxable years ending prior to the taxable year covered by a taxpayer's or person's first report or return filed on or after June 13, 2005, the IRS has determined that a transaction is no longer a listed transaction. However, as provided for in TSB-

M-05(2)C and TSB-M-05(4)I, if the transaction is an otherwise reportable transaction, all disclosure statements required to be filed with the IRS with respect to reportable 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, must be disclosed.

**Reporting requirements for taxpayers and persons required to file returns or reports under Article 22 who are nonresident individuals who participate in a group return clarified**

For purposes of Article 22, 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.

**Exception to the reporting requirements for material advisors**

A material advisor required to file a duplicate of the statement or return submitted to the IRS pursuant to section 6111 of the Internal Revenue Code (IRC) may file an abbreviated disclosure statement if: (1) the material advisor has designated one person as the designated material advisor for federal income tax purposes (a designation agreement), and (2) the designated material advisor elects “collective disclosure” by providing a list of the names, addresses, and tax identification numbers of each of the material advisors included in the IRS designation agreement.

To make the election, the designated material advisor must:

- write **Collective Disclosure** on the top of Form DTF- 664, *Tax shelter Disclosure for Material Advisors*,
- attach a list of the names, addresses, and tax identification numbers of each of the material advisors covered by the IRS designation agreement,
- complete and file Form DTF-664, and attach a copy of any statement or return submitted to the IRS pursuant to section 6111 of the IRC, including all documentation submitted to the IRS in connection with the statement or return, and
- notify each of the material advisors included in the IRS designation agreement of the election.

To file an abbreviated disclosure statement, the material advisor must:

- write **Collective Disclosure** on the top of Form DTF- 664,
- attach a copy of the IRS designation agreement,
- attach a copy of any statement or return submitted to the IRS pursuant to section 6111 of the IRC, including all documentation submitted to the IRS in connection with the statement or return that **is not covered** by the IRS designation agreement, and

- complete and file Form DTF-664 and list the name, address, and tax identification number of the designated material advisor.

In any event, the Department may require any material advisor (including but not limited to the designated material advisor) to provide, upon written request, a copy of any statement or return submitted to the IRS pursuant to section 6111 of the IRC and all documentation submitted to the IRS in connection with the statement or return.

### **Exception to the additional reporting requirements for material advisors**

If a material advisor required to maintain a duplicate of the list of persons maintained pursuant to section 6112 of the IRC has designated one person as the designated material advisor for federal income tax purposes (a designation agreement) to maintain the list or a portion of the list and the designated material advisor has elected collective disclosure on Form DTF-664, the designated material advisor must maintain the duplicate list and furnish a copy of the list within 20 days after written request is made for the list.

In any event, the Department may require any material advisor (including but not limited to the designated material advisor) to furnish a copy of the list within 20 days after written request is made for the list.

### **Voluntary compliance initiative expanded**

The voluntary compliance initiative (VCI) has been expanded to include tax liabilities under Articles 30-A and 30-B of the Tax Law. Accordingly, the voluntary compliance program applies to tax liabilities under Articles 9, 9-A, 22, 30, 30-A, 30-B, 32, or 33 of the Tax Law attributable to the use of tax avoidance transactions for tax years beginning before January 1, 2005. Further details of the VCI will be announced in a forthcoming publication.

(Ch. 161 of the Laws of 2005, section 34)