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Illinois Department of Revenue
Informational Bulletin

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Director of Revenue

Abusive Tax Shelter Disclosure Requirements for Composite Return Filers

To:
All income tax practitioners

The purpose of this bulletin is to provide guidance for any taxpayer who may be included on Form IL-1023-C, Composite Income and Replacement Tax Return, **and** is also required to disclose participation in certain potentially abusive tax avoidance transactions, commonly called abusive tax shelters.

What are the general disclosure requirements?

In general, any taxpayer who participated in a "reportable" transaction, including any "listed" transaction, must disclose their participation by attaching a copy of the federal disclosure form to their Illinois tax return and sending a second copy of the disclosure form to the Illinois Department of Revenue.

Disclosure requirements apply to transactions entered into in prior years.

For more information about "reportable" and "listed" transactions,

- see Illinois' information bulletin FY2005-06, Tax Shelter Voluntary Compliance Program, or
- visit the IRS web site at www.irs.gov.

Where do I send my disclosure statements?

If you need to mail your disclosure statement to us, use the following address.

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19029
SPRINGFIELD IL 62794-9029

What are the disclosure requirements for taxpayers filing on a composite return?

The general requirements for disclosure also apply to taxpayers who are included in a composite return.

Illinois law allows for partnerships and subchapter S corporations to fulfill disclosure requirements on behalf of partners and shareholders that are filed on a composite return. However, the partner or shareholder may choose to fulfill disclosure requirements by mailing the federal disclosure form directly to the department. See "Where do I send my disclosure statements ?" for the correct address.

For information or forms...

- Call us at:
  1 800 732-8866 or
  217 782-3336
- Call our TDD (telecommunications device for the deaf) at:
  1 800 544-5304
- Write us at:
  Illinois Department of Revenue
  P.O. Box 19044
  Springfield, IL 62794-9044
- Visit our Web site at:
  www.ILtax.com
- Call our 24-hour Forms Order Line at:
  1 800 356-6302

This bulletin is written to inform you of recent changes; it does not replace statutes, rules and regulations, or court decisions.

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The following are examples that show a variety of circumstances and how disclosure should be made with the Illinois Department of Revenue.

Example 1

Bob is an individual taxpayer who filed a separate Form IL-1040, Illinois Income Tax Return for his 2002 tax year. Bob participated in a listed transaction in 2002, that must be disclosed by the extended due date of his 2004 Illinois Income Tax Return.

In 2004, Bob became a partner in the ABC partnership, and has elected to be included on the Illinois composite return filed by ABC for the 2004 tax year.

To fulfill the disclosure requirements for the 2002 tax year, Bob must send a copy of his federal disclosure to the department by the extended due date of his 2004 tax return. A copy of the 2002 federal disclosure does not need to be attached to the 2004 composite return.

Example 2

Paul is an individual taxpayer who was included on an Illinois composite return filed by the ABC partnership for the 2004 taxable year.

In June 2004, ABC entered into a transaction that was not considered a listed or otherwise reportable transaction, initially. All the tax benefits from the transaction are reported on the 2004 composite return.

On January 1, 2005, Paul left the ABC partnership and joined the XYZ partnership. Paul's income tax liability for XYZ will be included on an Illinois composite return.

In August 2005, the IRS published a notice that identified the transaction ABC partnership entered into during 2004 as a listed transaction.

Because Paul was part of ABC in 2004, Paul is required to disclose this transaction to the department by the extended due date of his 2005 income tax return.

Paul is responsible for submitting a copy of the disclosure to the department. It does not need to be attached to the 2005 composite return filed by XYZ partnership.

Example 3

The facts from example 2 are the same, except that Paul remained with partnership ABC and is included on a composite return for partnership ABC for the 2005 tax year.

Paul's obligation to disclose the transaction will be met if

- the partnership includes a copy of the disclosure on the 2005 composite return by the extended due date, or
- Paul submits a copy of the disclosure by the extended due date of the composite return

Who is responsible for filing the disclosure?

As with any tax information, the taxpayer is responsible for ensuring that the department receives any required documents by the due dates indicated.

For example, if a partnership indicates that they will file the disclosure with the composite return, and they fail to do so, the taxpayer is ultimately responsible, not the partnership.

What if the disclosure is not filed?

If you are required to file a disclosure and fail to do so in a timely manner, you may be assessed a penalty.

The penalty rates are

- $15,000 for each instance the taxpayer fails to disclose a reportable transaction, and
- $30,000 for each instance the taxpayer fails to disclose a "listed transaction."

The total penalty cannot exceed 10 percent of the increase in net income resulting from disallowing the benefits of any tax shelter activities.

What is the federal disclosure form?

For the purpose of disclosing participation in an abusive tax shelter, the federal disclosure form is the U.S. Form 8886, Reportable Transaction Disclosure Statement.