2007 - 2008 LEGISLATURE

LRB-1602/2
JK:jld&cs:pg

DOA:......Easton, BB0404 – Tax shelter voluntary compliance program

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in 2-5-07

DO NOT GEN

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

This bill allows a taxpayer to report to DOR, without paying a penalty or facing criminal prosecution, certain transactions that are devised for the principal purpose of federal or state income or franchise tax and are required to be reported to the Internal Revenue Service under federal law. In order to avoid penalties and prosecution, a taxpayer must file an amended return with DOR for each taxable year beginning before January 1, 2007, in which the taxpayer participated in the transaction and pay any additional taxes. The amended return must be filed during the period beginning on October 1, 2007, and ending on December 31, 2007. Apart from the "grace period" provided under the bill, the bill, generally, requires taxpayers to report all such transactions to DOR, consistent with the reporting requirements under federal law, and pay all penalties, interest, and additional taxes.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.805 of the statutes is created to read:

71.805 Tax avoidance transactions voluntary compliance program. (1) DEFINITIONS. In this section:

(a) "Tax avoidance transaction" means a transaction, plan, or arrangement devised for the principal purpose of avoiding federal or Wisconsin income or franchise tax and that is a reportable transaction as provided under U.S. department of the treasury regulations. as of the effective date of this paragraph [revisor insert date]

(b) "Taxpayer" means a person who is subject to the taxes imposed under this chapter and who has a tax liability attributable to using a tax avoidance transaction for any taxable year beginning before January 1, 2007.

(2) PENALTY WAIVER OR ABATEMENT. All of the following apply with regard to a taxpayer who satisfies the conditions under sub. (3):

(a) Except as provided under sub. (4) (b), the department shall waive or abate all penalties that are applicable to the underreporting or underpayment of Wisconsin income or franchise taxes attributable to using a tax avoidance transaction for any taxable year for which the taxpayer satisfies the conditions under sub. (3).

(b) The department shall not seek a criminal prosecution against the taxpayer with respect to using a tax avoidance transaction for any taxable year for which the taxpayer satisfies the conditions under sub. (3).

(3) TAXPAYER ELIGIBILITY. A taxpayer is eligible for the benefits described under sub. (2) (a) and (b), if, during the period beginning on October 1, 2007, and ending on December 31, 2007, the taxpayer does the following:

(a) Files an amended Wisconsin tax return for each taxable year for which the taxpayer has previously filed a Wisconsin tax return that uses a tax avoidance transaction to underreport the taxpayer's Wisconsin income or franchise tax liability and the amended return reports the total Wisconsin net income and tax for the taxable year, computed without regard to any tax avoidance transaction and without regard to any other adjustment that is unrelated to any tax avoidance transaction.

(b) Pays, in full, for each taxable year for which an amended return is filed under par. (a), the entire amount of Wisconsin income or franchise tax and interest due that is attributable to using a tax avoidance transaction.

(4) LIMITATIONS AND ADMINISTRATION. (a) A taxpayer who receives the benefits described under sub. (2) may not file an appeal or a claim for credit or refund with respect to the tax avoidance transactions for the taxable years for which the taxpayer satisfied the conditions under sub. (3).

(b) The department may not waive or abate a penalty as provided under sub. (2) (a) if the penalty relates to an amount of Wisconsin income and franchise tax that is attributable to a tax avoidance transaction and assessed or paid prior to October 1, 2007, or after December 31, 2007.

(c) Notwithstanding the other provisions of this section, a transaction does not have to be a reportable transaction as provided under U.S. department of the treasury regulations in order for the department to examine the transaction with regard to its principal purpose.

(d) A taxpayer who files an amended return under sub. (3) (a) may file a separate amended return with respect to adjustments that are unrelated to any tax avoidance transaction.

(e) The department shall promulgate rules, publish forms and instructions, and take any other action necessary to implement and administer this section.

SECTION 2. 71.81 of the statutes is created to read:

71.81 Disclosing reportable transactions. (1) DEFINITIONS. In this section:

(a) "Listed transaction" means any reportable transaction that is the same as, or substantially similar to, a transaction, plan, or arrangement specifically identified by the U.S. secretary of the treasury as a ~~tax avoidance~~ listed transaction for purposes of section 6011 of the Internal Revenue Code.

(b) "Material advisor" means any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction and who, directly or indirectly, derives gross income from providing such aid, assistance, or advice in an amount that exceeds the threshold amount.

(c) "Reportable transaction" means any transaction, plan, or arrangement, including a listed transaction, for which a taxpayer is required to submit information to the department because the taxpayer is required to disclose the transaction, plan, or arrangement for federal income tax purposes, as provided under U.S. department of treasury regulations.

(d) "Tax shelter" means any entity, plan, or arrangement, if avoiding or evading federal income tax or Wisconsin income or franchise tax is a significant purpose of the entity, plan, or arrangement.

(e) "Threshold amount" means the following:

1. In the case of a reportable transaction, not including a listed transaction, from which a substantial part of the tax benefits are provided to an individual, $50,000.

2. In the case of a listed transaction from which a substantial part of the tax benefits are provided to an individual, $10,000.

; that occurred on or after January 1, 2002, and that is specifically identified by the U.S. secretary of the treasury as a listed transaction on or after the date the transaction occurred

3. In the case of a reportable transaction, not including a listed transaction, from which a substantial part of the tax benefits are provided to an entity and not an individual, $250,000.

4. In the case of a listed transaction, from which a substantial part of the tax benefits are provided to an entity and not an individual, $25,000.

(2) DISCLOSURE. For each taxable year in which a taxpayer has participated in a reportable transaction, the taxpayer shall file with the department a copy of any form prescribed by the internal revenue service for disclosing a reportable transaction for federal income tax purposes no later than 60 days after the date for which the taxpayer is required to file the form for federal income tax purposes, except that, if the taxpayer has filed a form with the internal revenue service on or before the effective date of this subsection .... [revisor inserts date], the taxpayer shall file a copy of the form with the department no later than December 31, 2007. The department may require that forms filed with the department under this subsection be filed separately from this state's income or franchise tax return. This subsection applies to any reportable transaction entered into on or after January 1, 2002, for any taxable year for which the transaction remains undisclosed and for which the statute of limitations on assessment, including any extension provided under sub. (6), has not expired as of the date that is 60 days after the effective date of this subsection .... [revisor inserts date].

(3) PENALTY FOR FAILING TO DISCLOSE. (a) Any taxpayer who does not file the form under sub. (2) and who is required to file the form is subject to the following penalty:

1. If the taxpayer participated in a reportable transaction that is not a listed transaction, the lesser of $15,000 or 10 percent of the tax benefit obtained from the reportable transaction.

2. If the taxpayer participated in a listed transaction, $30,000.

(b) The secretary of revenue may waive or abate any penalty imposed under this subsection, or any portion of such penalty, related to a reportable transaction that is not a listed transaction, if the waiver or abatement promotes compliance with this section and effective tax administration.

(c) The penalties imposed under this subsection apply to any failure to disclose a listed transaction entered into on or after January 1, 2002, including transactions that were not listed transactions when entered into, but became listed transactions before the effective date of this paragraph .... [revisor inserts date], or any other reportable transaction entered into after the effective date of this paragraph .... [revisor inserts date], for any taxable year for which the statute of limitations on assessment, including any extension under sub. (6), has not expired as of the effective date of this paragraph .... [revisor inserts date].

(4) UNDERSTATEMENT PENALTY. (a) If a taxpayer has a reportable transaction understatement, as determined in par. (b), the taxpayer shall pay, in addition to any tax owed with regard to the reportable transaction, an amount equal to either 20 percent of the reportable transaction understatement or, in the case of a reportable transaction that is not disclosed as provided in sub. (2), 30 percent of the reportable transaction understatement.

(b) A taxpayer has a reportable transaction understatement if the following calculation results in a positive number:

1. Multiply the taxpayer's highest applicable tax rate under s. 71.06, 71.27, or 71.46, by the amount of any increase in Wisconsin taxable income that results from the difference between the proper tax treatment of a reportable transaction and the taxpayer's treatment of the transaction as shown on the taxpayer's tax return, including any amended return the taxpayer files before the date on which the department first contacts the taxpayer regarding an examination of the taxable year for which the amended return is filed. For purposes of this subdivision, the amount of any increase in Wisconsin taxable income for a taxable year includes any reduction in the amount of loss available for carry–forward to the subsequent year.

2. Add the amount determined under subd. 1. to the amount of any decrease in the aggregate amount of Wisconsin income or franchise tax credits that results from the difference between the proper tax treatment of a reportable transaction and the taxpayer's treatment of the transaction as shown on the taxpayer's tax return.

(c) The secretary of revenue may waive or abate any penalty imposed under this subsection, or any portion of such penalty, if the taxpayer demonstrates to the department that the taxpayer had reasonable cause to act the way the taxpayer did, and in good faith, with regard to the tax treatment for which the taxpayer is subject to a penalty under this subsection and all facts relevant to the tax treatment are adequately disclosed in the filing under sub. (2), except that, if the taxpayer does not fully disclose such facts under sub. (2), the taxpayer's penalty may be waived or abated under this paragraph if the taxpayer demonstrates to the department that the taxpayer reasonably believed that the tax treatment for which the taxpayer is subject to a penalty under this subsection was more likely than not the proper treatment and substantial authority exists or existed for the tax treatment for which the taxpayer is subject to a penalty under this subsection.

INSERT 7-25

(5) ADDITIONAL UNDERSTATEMENT PENALTY. (a) 1. A taxpayer who files an amended return after December 31, 2007, and before the taxpayer is contacted by the internal revenue service or the department regarding a reportable transaction is subject to a penalty in an amount equal to 50 percent of the interest assessed under s. 71.82 on any reportable transaction understatement, as determined under sub. (4) (b), for the tax period for which the taxpayer files an amended return.

2. If the internal revenue service or the department contacts a taxpayer after December 31, 2007, regarding a reportable transaction and the taxpayer is contacted before the taxpayer files an amended return with respect to that transaction, the taxpayer is subject to a penalty in an amount equal to the interest assessed under s. 71.82 on any reportable transaction understatement, as determined under sub. (4) (b), for the tax period for which the internal revenue service or the department contacts the taxpayer.

a reportable transaction, including

(b) The penalties under ~~sub.~~ (a) apply to any reportable transaction understatement resulting from a listed (par) transaction entered into (on or) after January 1, 2002, ~~including transactions that were not listed transactions when entered into, but became listed transactions before the effective date of this paragraph .... [revisor inserts date], or from any other reportable transaction entered into after the effective date of this paragraph .... [revisor inserts date],~~ for any taxable year for which the statute of limitations on assessment, including any extension provided under sub. (6), has not expired as of the effective date of this paragraph .... [revisor inserts date].

(c) The secretary of revenue may waive or abate any penalty imposed under this subsection, or any portion of such penalty, if the taxpayer demonstrates to the department that the taxpayer had reasonable cause to act the way the taxpayer did, and in good faith, with regard to the tax treatment for which the taxpayer is subject to a penalty under this subsection and all facts relevant to the tax treatment are adequately disclosed in the filing under sub. (2), except that, if the taxpayer does not fully disclose such facts under sub. (2), the taxpayer's penalty may be waived or abated under this paragraph if the taxpayer demonstrates to the department that the taxpayer reasonably believed that the tax treatment for which the taxpayer is subject to a penalty under this subsection was more likely than not the proper treatment and substantial authority exists or existed for the tax treatment for which the taxpayer is subject to a penalty under this subsection.

(6) STATUTE OF LIMITATIONS EXTENSION. (a) Except as provided in par. (b), ~~If~~ if a taxpayer fails to provide any information regarding a reportable transaction, other than a listed transaction, under sub. (2), the time for assessing any tax imposed under this chapter with respect to that transaction shall expire no later than the date that is 6 years after the date on which the return for the taxable year in which the reportable transaction occurred was filed. If a taxpayer fails to provide any information regarding a listed transaction, under sub. (2), the time for assessing any tax imposed under this chapter with respect to that transaction shall expire on the ~~earliest~~ latest of the following dates:

~~(a)~~ 1. The date that is 6 years after the date on which the return for the taxable year in which the listed transaction occurred was filed.

~~(b)~~ 2. The date that is 12 months after the date on which the taxpayer provides information regarding the listed transaction under sub. (2).

~~(c)~~ 3. The date that is 12 months after the date on which the taxpayer's material advisor provides, at the department's request, the list described in sub. (7) (b).

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(7) MATERIAL ADVISOR. (a) Each material advisor who is required to disclose a reportable transaction under section 6111 of the Internal Revenue Code shall file a copy of the disclosure with the department no later than 60 days after the date for which the material advisor is required to file the disclosure with the internal revenue service, except that, if a material advisor files the disclosure with the internal revenue service on or before the effective date of this paragraph .... [revisor inserts date], the material advisor shall file a copy of the disclosure with the department no later than December 31, 2007.

(b) Each material advisor shall maintain a list that identifies each Wisconsin taxpayer for whom the person provided services as a material advisor with respect to a reportable transaction, regardless of whether the taxpayer is required to file the form under sub. (2). Any material advisor who is required to maintain a list under this paragraph shall provide the list to the department after receiving the department's written request to provide the list and shall retain the information contained in the list for 7 years or for the period determined by the department by rule. If 2 or more material advisors are required under this paragraph to maintain identical lists, the department may provide that only one of the material advisors maintain the list.

(c) This subsection applies to reportable transactions, not including listed transactions, for which a material advisor provides services after the effective date of this paragraph .... [revisor inserts date], and listed transactions for which a material advisor provides services, and were entered into, on or after January 1, 2002, regardless of when the transactions became listed transactions.

(8) MATERIAL ADVISOR PENALTIES. (a) If a person who is required to file a disclosure with the department as provided under sub. (7) (a) fails to file the disclosure or files a disclosure containing false or incomplete information, the person is subject to a penalty equal to the following amounts:

1. If the disclosure relates to a reportable transaction that is not a listed transaction, $15,000.

2. If the disclosure relates to a listed transaction, $100,000.

(b) Any person who is required to maintain a list under sub. (7) (b) and who fails to provide the list to the department no later than 20 business days after the date on which the person receives the department's request to provide the list, as provided under sub. (7) (b), shall pay a penalty to the department in an amount that is equal to $10,000 for each day that the person does not provide the list, beginning with the day that is 21 business days after the date on which the person receives the department's request.

(c) The secretary of revenue may waive or abate any penalty imposed under this subsection, or any portion of such penalty, related to a reportable transaction that is not a listed transaction, if the waiver or abatement promotes compliance with this section and effective tax administration or, with regard to the penalty imposed under par. (b), if, on each day after the time for providing the list without incurring a penalty has expired, the person demonstrates to the department that the person's failure to provide the list on that day is because of reasonable cause.

(9) TAX SHELTER PROMOTION. (a) Beginning on the effective date of this paragraph .... [revisor inserts date], any person who organizes or assists in organizing a tax shelter, or directly or indirectly participates in the sale of any interest in a tax shelter, and who makes or provides or causes another person to make or provide, in connection with such organization or sale, a statement that the person knows or has reason to know is false or fraudulent as to any material matter regarding the allowability of any tax deduction or credit, the excludability of any income, the manipulation of any allocation or apportionment rule, or the securing of any other tax benefit resulting from holding an interest in the entity or participating in the plan or arrangement, shall pay a penalty to the department, with respect to each sale or act of organization described under this paragraph, in an amount equal to 50 percent of the person's gross income derived from the sale or act.

(b) For purposes of administering this chapter, beginning on the effective date of this paragraph .... [revisor inserts date], a written communication between a tax practitioner and any person, director, officer, employee, agent, or representative of the person, or any other person holding a capital or profits interest in the person, regarding the promotion of the person's direct or indirect participation in any tax shelter is not considered a confidential or privileged communication.

(11) INJUNCTION. The department may commence an action in the circuit court of Dane County to enjoin a person from taking any action, or failing to take any action, that is subject to a penalty under this section or in violation of this section or any rules that the department promulgates pursuant to this section.

(END)

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(d) The penalties under par. (a) apply to any reportable transaction understatement from a reportable transaction, including a listed transaction, entered into on or after January 1, 2002, for any taxable year for which the statute of limitations on assessments, including any extension provided under sub. (6), has not expired as of the effective date of this paragraph .... [revisor inserts date].

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4. the date that is 4 years after the date on which the department discovers a listed transaction that was a listed transaction on the date the transaction occurred for which the taxpayer did not provide the information described under sub. (2) or for which the taxpayer's material advisor did not provide the information described under sub. (7) (b).

¶(b) Any limitation determined under par. (a) may be extended by a written agreement between the taxpayer and the department as provided under s. 71.77 (5).

State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1602/3
JK:jld&cs&lmk:nwn

DOA:......Easton, BB0404 – Tax shelter voluntary compliance program

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

This bill allows a taxpayer to report to DOR, without paying a penalty or facing criminal prosecution, certain transactions that are devised for the principal purpose of federal or state income or franchise tax and are required to be reported to the Internal Revenue Service under federal law. In order to avoid penalties and prosecution, a taxpayer must file an amended return with DOR for each taxable year beginning before January 1, 2007, in which the taxpayer participated in the transaction and pay any additional taxes. The amended return must be filed during the period beginning on October 1, 2007, and ending on December 31, 2007. Apart from the "grace period" provided under the bill, the bill, generally, requires taxpayers to report all such transactions to DOR, consistent with the reporting requirements under federal law, and pay all penalties, interest, and additional taxes.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.805 of the statutes is created to read:

71.805 Tax avoidance transactions voluntary compliance program. (1) DEFINITIONS. In this section:

(a) "Tax avoidance transaction" means a transaction, plan, or arrangement devised for the principal purpose of avoiding federal or Wisconsin income or franchise tax and that is a reportable transaction as provided under U.S. department of the treasury regulations as of the effective date of this paragraph .... [revisor inserts date].

(b) "Taxpayer" means a person who is subject to the taxes imposed under this chapter and who has a tax liability attributable to using a tax avoidance transaction for any taxable year beginning before January 1, 2007.

(2) PENALTY WAIVER OR ABATEMENT. All of the following apply with regard to a taxpayer who satisfies the conditions under sub. (3):

(a) Except as provided under sub. (4) (b), the department shall waive or abate all penalties that are applicable to the underreporting or underpayment of Wisconsin income or franchise taxes attributable to using a tax avoidance transaction for any taxable year for which the taxpayer satisfies the conditions under sub. (3).

(b) The department shall not seek a criminal prosecution against the taxpayer with respect to using a tax avoidance transaction for any taxable year for which the taxpayer satisfies the conditions under sub. (3).

(3) TAXPAYER ELIGIBILITY. A taxpayer is eligible for the benefits described under sub. (2) (a) and (b), if, during the period beginning on October 1, 2007, and ending on December 31, 2007, the taxpayer does the following:

(a) Files an amended Wisconsin tax return for each taxable year for which the taxpayer has previously filed a Wisconsin tax return that uses a tax avoidance transaction to underreport the taxpayer's Wisconsin income or franchise tax liability and the amended return reports the total Wisconsin net income and tax for the taxable year, computed without regard to any tax avoidance transaction and without regard to any other adjustment that is unrelated to any tax avoidance transaction.

(b) Pays, in full, for each taxable year for which an amended return is filed under par. (a), the entire amount of Wisconsin income or franchise tax and interest due that is attributable to using a tax avoidance transaction.

(4) LIMITATIONS AND ADMINISTRATION. (a) A taxpayer who receives the benefits described under sub. (2) may not file an appeal or a claim for credit or refund with respect to the tax avoidance transactions for the taxable years for which the taxpayer satisfied the conditions under sub. (3).

(b) The department may not waive or abate a penalty as provided under sub. (2) (a) if the penalty relates to an amount of Wisconsin income and franchise tax that is attributable to a tax avoidance transaction and assessed or paid prior to October 1, 2007, or after December 31, 2007.

(c) Notwithstanding the other provisions of this section, a transaction does not have to be a reportable transaction as provided under U.S. department of the treasury regulations in order for the department to examine the transaction with regard to its principal purpose.

(d) A taxpayer who files an amended return under sub. (3) (a) may file a separate amended return with respect to adjustments that are unrelated to any tax avoidance transaction.

(e) The department shall promulgate rules, publish forms and instructions, and take any other action necessary to implement and administer this section.

SECTION 2. 71.81 of the statutes is created to read:

71.81 Disclosing reportable transactions. (1) DEFINITIONS. In this section:

(a) "Listed transaction" means any reportable transaction that is the same as, or substantially similar to, a transaction, plan, or arrangement specifically identified by the U.S. secretary of the treasury as a listed transaction, for purposes of section 6011 of the Internal Revenue Code, that occurred on or after January 1, 2002, and that is specifically identified by the U.S. secretary of the treasury as a listed transaction on or after the date the transaction occurred.

(b) "Material advisor" means any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction and who, directly or indirectly, derives gross income from providing such aid, assistance, or advice in an amount that exceeds the threshold amount.

(c) "Reportable transaction" means any transaction, plan, or arrangement, including a listed transaction, for which a taxpayer is required to submit information to the department because the taxpayer is required to disclose the transaction, plan, or arrangement for federal income tax purposes, as provided under U.S. department of treasury regulations.

(d) "Tax shelter" means any entity, plan, or arrangement, if avoiding or evading federal income tax or Wisconsin income or franchise tax is a significant purpose of the entity, plan, or arrangement.

(e) "Threshold amount" means the following:

1. In the case of a reportable transaction, not including a listed transaction, from which a substantial part of the tax benefits are provided to an individual, $50,000.

2. In the case of a listed transaction from which a substantial part of the tax benefits are provided to an individual, $10,000.

3. In the case of a reportable transaction, not including a listed transaction, from which a substantial part of the tax benefits are provided to an entity and not an individual, $250,000.

4. In the case of a listed transaction, from which a substantial part of the tax benefits are provided to an entity and not an individual, $25,000.

(2) DISCLOSURE. For each taxable year in which a taxpayer has participated in a reportable transaction, the taxpayer shall file with the department a copy of any form prescribed by the internal revenue service for disclosing a reportable transaction for federal income tax purposes no later than 60 days after the date for which the taxpayer is required to file the form for federal income tax purposes, except that, if the taxpayer has filed a form with the internal revenue service on or before the effective date of this subsection .... [revisor inserts date], the taxpayer shall file a copy of the form with the department no later than December 31, 2007. The department may require that forms filed with the department under this subsection be filed separately from this state's income or franchise tax return. This subsection applies to any reportable transaction entered into on or after January 1, 2002, for any taxable year for which the transaction remains undisclosed and for which the statute of limitations on assessment, including any extension provided under sub. (6), has not expired as of the date that is 60 days after the effective date of this subsection .... [revisor inserts date].

(3) PENALTY FOR FAILING TO DISCLOSE. (a) Any taxpayer who does not file the form under sub. (2) and who is required to file the form is subject to the following penalty:

1. If the taxpayer participated in a reportable transaction that is not a listed transaction, the lesser of $15,000 or 10 percent of the tax benefit obtained from the reportable transaction.

2. If the taxpayer participated in a listed transaction, $30,000.

(b) The secretary of revenue may waive or abate any penalty imposed under this subsection, or any portion of such penalty, related to a reportable transaction that is not a listed transaction, if the waiver or abatement promotes compliance with this section and effective tax administration.

(c) The penalties imposed under this subsection apply to any failure to disclose a listed transaction entered into on or after January 1, 2002, including transactions that were not listed transactions when entered into, but became listed transactions before the effective date of this paragraph .... [revisor inserts date], or any other reportable transaction entered into after the effective date of this paragraph .... [revisor inserts date], for any taxable year for which the statute of limitations on assessment, including any extension under sub. (6), has not expired as of the effective date of this paragraph .... [revisor inserts date].

(4) UNDERSTATEMENT PENALTY. (a) If a taxpayer has a reportable transaction understatement, as determined in par. (b), the taxpayer shall pay, in addition to any tax owed with regard to the reportable transaction, an amount equal to either 20 percent of the reportable transaction understatement or, in the case of a reportable transaction that is not disclosed as provided in sub. (2), 30 percent of the reportable transaction understatement.

(b) A taxpayer has a reportable transaction understatement if the following calculation results in a positive number:

1. Multiply the taxpayer's highest applicable tax rate under s. 71.06, 71.27, or 71.46, by the amount of any increase in Wisconsin taxable income that results from the difference between the proper tax treatment of a reportable transaction and the taxpayer's treatment of the transaction as shown on the taxpayer's tax return, including any amended return the taxpayer files before the date on which the department first contacts the taxpayer regarding an examination of the taxable year for which the amended return is filed. For purposes of this subdivision, the amount of any increase in Wisconsin taxable income for a taxable year includes any reduction in the amount of loss available for carry–forward to the subsequent year.

2. Add the amount determined under subd. 1. to the amount of any decrease in the aggregate amount of Wisconsin income or franchise tax credits that results from the difference between the proper tax treatment of a reportable transaction and the taxpayer's treatment of the transaction as shown on the taxpayer's tax return.

(c) The secretary of revenue may waive or abate any penalty imposed under this subsection, or any portion of such penalty, if the taxpayer demonstrates to the department that the taxpayer had reasonable cause to act the way the taxpayer did, and in good faith, with regard to the tax treatment for which the taxpayer is subject to a penalty under this subsection and all facts relevant to the tax treatment are adequately disclosed in the filing under sub. (2), except that, if the taxpayer does not fully disclose such facts under sub. (2), the taxpayer's penalty may be waived or abated under this paragraph if the taxpayer demonstrates to the department that the taxpayer reasonably believed that the tax treatment for which the taxpayer is subject to a penalty under this subsection was more likely than not the proper treatment and substantial authority exists or existed for the tax treatment for which the taxpayer is subject to a penalty under this subsection.

(d) The penalties under par. (a) apply to any reportable transaction understatement from a reportable transaction, including a listed transaction, entered into on or after January 1, 2002, for any taxable year for which the statute of limitations on assessment, including any extension provided under sub. (6), has not expired as of the effective date of this paragraph .... [revisor inserts date].

(5) ADDITIONAL UNDERSTATEMENT PENALTY. (a) 1. A taxpayer who files an amended return after December 31, 2007, and before the taxpayer is contacted by the internal revenue service or the department regarding a reportable transaction is subject to a penalty in an amount equal to 50 percent of the interest assessed under s. 71.82 on any reportable transaction understatement, as determined under sub. (4) (b), for the tax period for which the taxpayer files an amended return.

2. If the internal revenue service or the department contacts a taxpayer after December 31, 2007, regarding a reportable transaction and the taxpayer is contacted before the taxpayer files an amended return with respect to that transaction, the taxpayer is subject to a penalty in an amount equal to the interest assessed under s. 71.82 on any reportable transaction understatement, as determined under sub. (4) (b), for the tax period for which the internal revenue service or the department contacts the taxpayer.

(b) The penalties under par. (a) apply to any reportable transaction understatement resulting from a reportable transaction, including a listed transaction, entered into on or after January 1, 2002, for any taxable year for which the statute of limitations on assessment, including any extension provided under sub. (6), has not expired as of the effective date of this paragraph .... [revisor inserts date].

(c) The secretary of revenue may waive or abate any penalty imposed under this subsection, or any portion of such penalty, if the taxpayer demonstrates to the department that the taxpayer had reasonable cause to act the way the taxpayer did, and in good faith, with regard to the tax treatment for which the taxpayer is subject to a penalty under this subsection and all facts relevant to the tax treatment are adequately disclosed in the filing under sub. (2), except that, if the taxpayer does not fully disclose such facts under sub. (2), the taxpayer's penalty may be waived or abated under this paragraph if the taxpayer demonstrates to the department that the taxpayer reasonably believed that the tax treatment for which the taxpayer is subject to a penalty under this subsection was more likely than not the proper treatment and substantial authority exists or existed for the tax treatment for which the taxpayer is subject to a penalty under this subsection.

(6) STATUTE OF LIMITATIONS EXTENSION. (a) Except as provided in par. (b), if a taxpayer fails to provide any information regarding a reportable transaction, other than a listed transaction, under sub. (2), the time for assessing any tax imposed under this chapter with respect to that transaction shall expire no later than the date that is 6 years after the date on which the return for the taxable year in which the reportable transaction occurred was filed. If a taxpayer fails to provide any information regarding a listed transaction, under sub. (2), the time for assessing any tax imposed under this chapter with respect to that transaction shall expire on the latest of the following dates:

1. The date that is 6 years after the date on which the return for the taxable year in which the listed transaction occurred was filed.

2. The date that is 12 months after the date on which the taxpayer provides information regarding the listed transaction under sub. (2).

3. The date that is 12 months after the date on which the taxpayer's material advisor provides, at the department's request, the list described in sub. (7) (b).

4. The date that is 4 years after the date on which the department discovers a listed transaction that was a listed transaction on the date the transaction occurred for which the taxpayer did not provide the information described under sub. (2) or for which the taxpayer's material advisor did not provide the information described under sub. (7) (b).

(b) Any limitation determined under par. (a) may be extended by a written agreement between the taxpayer and the department as provided under s. 71.77 (5).

(7) MATERIAL ADVISOR. (a) Each material advisor who is required to disclose a reportable transaction under section 6111 of the Internal Revenue Code shall file a copy of the disclosure with the department no later than 60 days after the date for which the material advisor is required to file the disclosure with the internal revenue service, except that, if a material advisor files the disclosure with the internal revenue service on or before the effective date of this paragraph .... [revisor inserts date], the material advisor shall file a copy of the disclosure with the department no later than December 31, 2007.

(b) Each material advisor shall maintain a list that identifies each Wisconsin taxpayer for whom the person provided services as a material advisor with respect to a reportable transaction, regardless of whether the taxpayer is required to file the form under sub. (2). Any material advisor who is required to maintain a list under this paragraph shall provide the list to the department after receiving the department's written request to provide the list and shall retain the information contained in the list for 7 years or for the period determined by the department by rule. If 2 or more material advisors are required under this paragraph to maintain identical lists, the department may provide that only one of the material advisors maintain the list.

(c) This subsection applies to reportable transactions, not including listed transactions, for which a material advisor provides services after the effective date of this paragraph .... [revisor inserts date], and listed transactions for which a material advisor provides services, and were entered into, on or after January 1, 2002, regardless of when the transactions became listed transactions.

(8) MATERIAL ADVISOR PENALTIES. (a) If a person who is required to file a disclosure with the department as provided under sub. (7) (a) fails to file the disclosure or files a disclosure containing false or incomplete information, the person is subject to a penalty equal to the following amounts:

1. If the disclosure relates to a reportable transaction that is not a listed transaction, $15,000.

2. If the disclosure relates to a listed transaction, $100,000.

(b) Any person who is required to maintain a list under sub. (7) (b) and who fails to provide the list to the department no later than 20 business days after the date on which the person receives the department's request to provide the list, as provided under sub. (7) (b), shall pay a penalty to the department in an amount that is equal to $10,000 for each day that the person does not provide the list, beginning with the day that is 21 business days after the date on which the person receives the department's request.

(c) The secretary of revenue may waive or abate any penalty imposed under this subsection, or any portion of such penalty, related to a reportable transaction that is not a listed transaction, if the waiver or abatement promotes compliance with this section and effective tax administration or, with regard to the penalty imposed under par. (b), if, on each day after the time for providing the list without incurring a penalty has expired, the person demonstrates to the department that the person's failure to provide the list on that day is because of reasonable cause.

(9) TAX SHELTER PROMOTION. (a) Beginning on the effective date of this paragraph .... [revisor inserts date], any person who organizes or assists in organizing a tax shelter, or directly or indirectly participates in the sale of any interest in a tax shelter, and who makes or provides or causes another person to make or provide, in connection with such organization or sale, a statement that the person knows or has reason to know is false or fraudulent as to any material matter regarding the allowability of any tax deduction or credit, the excludability of any income, the manipulation of any allocation or apportionment rule, or the securing of any other tax benefit resulting from holding an interest in the entity or participating in the plan or arrangement, shall pay a penalty to the department, with respect to each sale or act of organization described under this paragraph, in an amount equal to 50 percent of the person's gross income derived from the sale or act.

(b) For purposes of administering this chapter, beginning on the effective date of this paragraph .... [revisor inserts date], a written communication between a tax practitioner and any person, director, officer, employee, agent, or representative of the person, or any other person holding a capital or profits interest in the person, regarding the promotion of the person's direct or indirect participation in any tax shelter is not considered a confidential or privileged communication.

(11) INJUNCTION. The department may commence an action in the circuit court of Dane County to enjoin a person from taking any action, or failing to take any action, that is subject to a penalty under this section or in violation of this section or any rules that the department promulgates pursuant to this section.

(END)