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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in 2-5-07

DO NOT OPEN

1 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 [revision 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

1 and the amended return reports the total Wisconsin net income and tax for the
2 taxable year, computed without regard to any tax avoidance transaction and without
3 regard to any other adjustment that is unrelated to any tax avoidance transaction.

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

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

11 (b) The department may not waive or abate a penalty as provided under sub.
12 (2) (a) if the penalty relates to an amount of Wisconsin income and franchise tax that
13 is attributable to a tax avoidance transaction and assessed or paid prior to October
14 1, 2007, or after December 31, 2007.

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

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

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

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

25 **71.81 Disclosing reportable transactions. (1) DEFINITIONS.** In this section:

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

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

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

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

18 (e) "Threshold amount" means the following:

19 1. In the case of a reportable transaction, not including a listed transaction,
 20 from which a substantial part of the tax benefits are provided to an individual,
 21 \$50,000.

22 2. In the case of a listed transaction from which a substantial part of the tax
 23 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

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

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

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

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

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

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

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

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

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

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

1 1. Multiply the taxpayer's highest applicable tax rate under s. 71.06, 71.27, or
2 71.46, by the amount of any increase in Wisconsin taxable income that results from
3 the difference between the proper tax treatment of a reportable transaction and the
4 taxpayer's treatment of the transaction as shown on the taxpayer's tax return,
5 including any amended return the taxpayer files before the date on which the
6 department first contacts the taxpayer regarding an examination of the taxable year
7 for which the amended return is filed. For purposes of this subdivision, the amount
8 of any increase in Wisconsin taxable income for a taxable year includes any reduction
9 in the amount of loss available for carry-forward to the subsequent year.

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

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

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

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

14 (b) The penalties under sub. (a) apply to any reportable transaction
15 understatement resulting from a listed ^{year} transaction entered into ^{on or} after January 1,
16 2002, ~~including transactions that were not listed transactions when entered into, but~~
17 ~~became listed transactions before the effective date of this paragraph [revisor~~
18 ~~inserts date], or from any other reportable transaction entered into after the effective~~
19 ~~date of this paragraph [revisor inserts date],~~ for any taxable year for which the
20 statute of limitations on assessment, including any extension provided under sub.
21 (6), has not expired as of the effective date of this paragraph [revisor inserts date].

22 (c) The secretary of revenue may waive or abate any penalty imposed under this
23 subsection, or any portion of such penalty, if the taxpayer demonstrates to the
24 department that the taxpayer had reasonable cause to act the way the taxpayer did,
25 and in good faith, with regard to the tax treatment for which the taxpayer is subject

1 to a penalty under this subsection and all facts relevant to the tax treatment are
2 adequately disclosed in the filing under sub. (2), except that, if the taxpayer does not
3 fully disclose such facts under sub. (2), the taxpayer's penalty may be waived or
4 abated under this paragraph if the taxpayer demonstrates to the department that
5 the taxpayer reasonably believed that the tax treatment for which the taxpayer is
6 subject to a penalty under this subsection was more likely than not the proper
7 treatment and substantial authority exists or existed for the tax treatment for which
8 the taxpayer is subject to a penalty under this subsection.

(a) except as provided in sub. (b) ↑

9 **(6) STATUTE OF LIMITATIONS EXTENSION.**

10 *If* a taxpayer fails to provide any
11 information regarding a reportable transaction, other than a listed transaction,
12 under sub. (2), the time for assessing any tax imposed under this chapter with
13 respect to that transaction shall expire no later than the date that is 6 years after the
14 date on which the return for the taxable year in which the reportable transaction
15 occurred was filed. If a taxpayer fails to provide any information regarding a listed
16 transaction, under sub. (2), the time for assessing any tax imposed under this chapter
17 with respect to that transaction shall expire on the ~~earliest~~ *latest* of the following dates:

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

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

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

24 **(7) MATERIAL ADVISOR.** (a) Each material advisor who is required to disclose a
25 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

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1 which the material advisor is required to file the disclosure with the internal revenue
2 service, except that, if a material advisor files the disclosure with the internal
3 revenue service on or before the effective date of this paragraph [revisor inserts
4 date], the material advisor shall file a copy of the disclosure with the department no
5 later than December 31, 2007.

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

16 (c) This subsection applies to reportable transactions, not including listed
17 transactions, for which a material advisor provides services after the effective date
18 of this paragraph [revisor inserts date], and listed transactions for which a
19 material advisor provides services, and were entered into, on or after January 1,
20 2002, regardless of when the transactions became listed transactions.

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

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

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

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

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

18 **(9) TAX SHELTER PROMOTION.** (a) Beginning on the effective date of this
19 paragraph [revisor inserts date], any person who organizes or assists in
20 organizing a tax shelter, or directly or indirectly participates in the sale of any
21 interest in a tax shelter, and who makes or provides or causes another person to make
22 or provide, in connection with such organization or sale, a statement that the person
23 knows or has reason to know is false or fraudulent as to any material matter
24 regarding the allowability of any tax deduction or credit, the excludability of any
25 income, the manipulation of any allocation or apportionment rule, or the securing of

1 any other tax benefit resulting from holding an interest in the entity or participating
2 in the plan or arrangement, shall pay a penalty to the department, with respect to
3 each sale or act of organization described under this paragraph, in an amount equal
4 to 50 percent of the person's gross income derived from the sale or act.

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

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

15 (END)

Insert 7-25

¶ (d) the penalties under par. (a) apply to any
understatement
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,
extension
including any extension provided under sub(6),
has
~~have~~ 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

(5)

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

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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:

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

2 **71.805 Tax avoidance transactions voluntary compliance program. (1)**

3 DEFINITIONS. In this section:

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

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

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

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

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

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

24 (a) Files an amended Wisconsin tax return for each taxable year for which the
25 taxpayer has previously filed a Wisconsin tax return that uses a tax avoidance

1 transaction to underreport the taxpayer's Wisconsin income or franchise tax liability
2 and the amended return reports the total Wisconsin net income and tax for the
3 taxable year, computed without regard to any tax avoidance transaction and without
4 regard to any other adjustment that is unrelated to any tax avoidance transaction.

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

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

12 (b) The department may not waive or abate a penalty as provided under sub.
13 (2) (a) if the penalty relates to an amount of Wisconsin income and franchise tax that
14 is attributable to a tax avoidance transaction and assessed or paid prior to October
15 1, 2007, or after December 31, 2007.

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

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

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24 and take any other action necessary to implement and administer this section.

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

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

2 (a) "Listed transaction" means any reportable transaction that is the same as,
3 or substantially similar to, a transaction, plan, or arrangement specifically identified
4 by the U.S. secretary of the treasury as a listed transaction, for purposes of section
5 6011 of the Internal Revenue Code, that occurred on or after January 1, 2002, and
6 that is specifically identified by the U.S. secretary of the treasury as a listed
7 transaction on or after the date the transaction occurred.

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

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

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

21 (e) "Threshold amount" means the following:

22 1. In the case of a reportable transaction, not including a listed transaction,
23 from which a substantial part of the tax benefits are provided to an individual,
24 \$50,000.

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

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

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

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

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

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

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6 this subsection, or any portion of such penalty, related to a reportable transaction
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8 this section and effective tax administration.

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10 a listed transaction entered into on or after January 1, 2002, including transactions
11 that were not listed transactions when entered into, but became listed transactions
12 before the effective date of this paragraph [revisor inserts date], or any other
13 reportable transaction entered into after the effective date of this paragraph
14 [revisor inserts date], for any taxable year for which the statute of limitations on
15 assessment, including any extension under sub. (6), has not expired as of the effective
16 date of this paragraph [revisor inserts date].

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

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

1 1. Multiply the taxpayer's highest applicable tax rate under s. 71.06, 71.27, or
2 71.46, by the amount of any increase in Wisconsin taxable income that results from
3 the difference between the proper tax treatment of a reportable transaction and the
4 taxpayer's treatment of the transaction as shown on the taxpayer's tax return,
5 including any amended return the taxpayer files before the date on which the
6 department first contacts the taxpayer regarding an examination of the taxable year
7 for which the amended return is filed. For purposes of this subdivision, the amount
8 of any increase in Wisconsin taxable income for a taxable year includes any reduction
9 in the amount of loss available for carry-forward to the subsequent year.

10 2. Add the amount determined under subd. 1. to the amount of any decrease
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12 from the difference between the proper tax treatment of a reportable transaction and
13 the taxpayer's treatment of the transaction as shown on the taxpayer's tax return.

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17 and in good faith, with regard to the tax treatment for which the taxpayer is subject
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19 adequately disclosed in the filing under sub. (2), except that, if the taxpayer does not
20 fully disclose such facts under sub. (2), the taxpayer's penalty may be waived or
21 abated under this paragraph if the taxpayer demonstrates to the department that
22 the taxpayer reasonably believed that the tax treatment for which the taxpayer is
23 subject to a penalty under this subsection was more likely than not the proper
24 treatment and substantial authority exists or existed for the tax treatment for which
25 the taxpayer is subject to a penalty under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 identical lists, the department may provide that only one of the material advisors
2 maintain the list.

3 (c) This subsection applies to reportable transactions, not including listed
4 transactions, for which a material advisor provides services after the effective date
5 of this paragraph [revisor inserts date], and listed transactions for which a
6 material advisor provides services, and were entered into, on or after January 1,
7 2002, regardless of when the transactions became listed transactions.

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

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

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

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

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

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1 par. (b), if, on each day after the time for providing the list without incurring a
2 penalty has expired, the person demonstrates to the department that the person's
3 failure to provide the list on that day is because of reasonable cause.

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

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

22 **(11) INJUNCTION.** The department may commence an action in the circuit court
23 of Dane County to enjoin a person from taking any action, or failing to take any

1 action, that is subject to a penalty under this section or in violation of this section or
2 any rules that the department promulgates pursuant to this section.

3 (END)