



Substitute Senate Bill No. 1265

Public Act No. 05-116

AN ACT CONCERNING PENALTIES FOR FAILURE TO REPORT LISTED TRANSACTIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage and applicable to any open tax period*) A penalty is hereby imposed on every person who engages in activities described in Section 6700(a) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, and who is subject to the fifty per cent penalty imposed thereunder, whether or not such penalty has been imposed, where such activities affect tax returns required to be filed with the Commissioner of Revenue Services. The amount of the penalty imposed hereunder shall be equal to fifty per cent of the gross income derived from, or to be derived from, such activities by such person.

Sec. 2. Section 12-233 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2005*):

(a) (1) The commissioner shall [, (1)] examine the tax return filed under this chapter by a taxpayer and may make such further audit or investigation as the commissioner deems necessary, and if the

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commissioner determines that there is a deficiency with respect to the payment of any tax due under this chapter, the commissioner shall notify the taxpayer thereof. Except as otherwise provided in this section, the commissioner shall (A) in the case of a return on which an operating loss is not reported, [within] not later than three years after the due date for the filing of such return or [within] not later than three years after the date on which such return was received by [him] such commissioner, whichever period expires later, or [(2)] (B) in the case of a return on which an operating loss is reported, [within] not later than three years after the due date or the date of receipt by the commissioner, whichever period expires later, of the return on which a carry-over of such loss is fully utilized or deemed fully utilized because such loss is not available for deduction in any subsequent income year, examine it and, in case any error is disclosed by such examination, shall [within thirty days after such disclosure, notify the taxpayer thereof] mail a notice of deficiency assessment to the taxpayer. Where, within the sixty-day period ending on the day on which the time prescribed in this section for mailing a notice of deficiency assessment for any income year would otherwise expire, the commissioner receives a written document signed by such taxpayer showing that such taxpayer owes an additional amount of tax for such income year, the commissioner then shall have up to sixty days after the day such written document is received in which to mail a notice of deficiency assessment.

(2) A notice of deficiency assessment may be mailed to the taxpayer at any time in the case of (A) failure to file a return, including any amended return required pursuant to section 12-226, or (B) a deficiency due to fraud or intent to evade the provisions of this chapter or regulations promulgated thereunder.

(3) In the case of an omission from gross income of an amount properly includable therein that is in excess of twenty-five per cent of

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the amount of gross income stated in the return, a notice of deficiency assessment may be mailed to the taxpayer at any time not later than six years after the return was filed. For purposes of this subdivision, there shall not be taken into account any amount that is omitted from gross income stated in the return if such amount is disclosed in the return or in a statement attached to the return, in a manner adequate to apprise the commissioner of the nature and amount of such item.

(4) In the case of a failure to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code, on the taxpayer's federal income tax return, a notice of deficiency assessment may be mailed to the taxpayer at any time not later than six years after the return required under this chapter for the same income year was filed.

(b) (1) When it appears that any part of the deficiency for which a deficiency assessment is made is due to negligence or intentional disregard of the provisions of this part or regulations promulgated thereunder, there shall be imposed a penalty equal to ten per cent of the amount of such deficiency assessment, or fifty dollars, whichever is greater. When it appears that any part of the deficiency for which a deficiency assessment is made is due to fraud or intent to evade the provisions of this part or regulations promulgated thereunder, there shall be imposed a penalty equal to twenty-five per cent of the amount of such deficiency assessment. When it appears that any part of the deficiency for which a deficiency assessment is made pursuant to section 12-233, as amended by this act, is due to failure to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, on the taxpayer's federal tax return, there shall be imposed a penalty equal to seventy-five per cent of the amount of such deficiency assessment.

(2) No taxpayer shall be subject to more than one penalty under this section in relation to the same tax period.

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(3) Any decision rendered by any federal court holding that a taxpayer has filed a fraudulent return with the Director of Internal Revenue shall subject the taxpayer to the penalty imposed by this section without the necessity of further proof thereof, except when it can be shown that the return to the state so differed from the return to the federal government as to afford a reasonable presumption that the attempt to defraud did not extend to the return to the state.

(c) [Within] Not later than thirty days [of] after the mailing of [such] a notice of deficiency assessment, the taxpayer shall pay to the commissioner, in cash or by check, draft or money order drawn to the order of the Commissioner of Revenue Services, any additional amount of tax shown to be due by [the corrected return or] such notice, or such taxpayer shall be paid by the State Treasurer, upon order of the Comptroller, any amount shown to be due it by [such] the corrected return. The failure of the taxpayer to receive any timely mailed notice required by this section shall not relieve [him] such taxpayer of the obligation to pay the tax assessed under the terms of this part or any interest or penalties thereon.

(d) When, before the expiration of the time prescribed in this section for the examination of the return or the assessment of the tax, both the commissioner and the taxpayer have consented in writing to such examination or assessment after such time, the return may be examined and the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The commissioner may also in such a case waive the statute of limitations against a claim for refund by such taxpayer.

(e) For purposes of this section, a tax return filed under this chapter before the last day prescribed by law or by any regulation adopted pursuant to this chapter for the filing of such return, determined

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without regard to any extension of time for filing, shall be deemed to be filed on such last day.

Sec. 3. Subsection (a) of section 12-728 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to taxable years commencing on or after January 1, 2005*):

(a) (1) After a final return pursuant to the provisions of this chapter is filed, the commissioner shall cause the same to be examined and may make such further audit or investigation or reaudit as the commissioner deems necessary, and if the commissioner determines that there is a deficiency with respect to the payment of any tax due under this chapter, the commissioner shall assess or reassess the additional taxes, penalties and interest due to this state, give notice of such assessment or reassessment to the taxpayer and make demand upon the taxpayer for payment. [Within] Not later than sixty days [of] after the mailing of such notice, the taxpayer shall pay to the commissioner, in cash or by check, draft or money order drawn to the order of the commissioner, the amount of the deficiency. Such amount shall bear interest at the rate of one per cent per month or fraction thereof from the date when the original tax became due and payable.

(2) When it appears that any part of the deficiency for which a deficiency assessment is made is due to negligence or intentional disregard of the provisions of this chapter or regulations adopted thereunder, there shall be imposed a penalty equal to ten per cent of the amount of such deficiency assessment. When it appears that any part of the deficiency for which a deficiency assessment is made is due to fraud or intent to evade the provisions of this chapter or regulations adopted thereunder, there shall be imposed a penalty equal to twenty-five per cent of the amount of such deficiency assessment. When it appears that any part of the deficiency for which a deficiency assessment is made is due to failure to disclose a listed transaction, as

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defined in Section 6707A of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, on the taxpayer's federal tax return, there shall be imposed a penalty equal to seventy-five per cent of the amount of such deficiency assessment.

(3) No taxpayer shall be subject to more than one penalty under this section in relation to the same tax period.

(4) Any decision rendered by any federal court holding that a taxpayer has filed a fraudulent return with the Director of Internal Revenue shall subject the taxpayer to the twenty-five per cent penalty imposed by this subsection without the necessity of further proof thereof, except when it can be shown that the return to the state so differed from the return to the federal government as to afford a reasonable presumption that the attempt to defraud did not extend to the state.

Sec. 4. Subsection (c) of section 12-733 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to taxable years commencing on or after January 1, 2005*):

(c) (1) If no return is filed or if a taxpayer makes, wilfully or otherwise, a false or fraudulent return, a notice of deficiency assessment may be mailed to the taxpayer at any time.

(2) If a taxpayer wilfully attempts in any manner to defeat or evade a tax imposed by this chapter, a notice of deficiency assessment may be mailed to the taxpayer at any time.

(3) If a taxpayer fails to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code, on the taxpayer's federal tax return, a notice of deficiency assessment may be mailed to the taxpayer at any time not later than six years after the return required

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under this chapter for the same taxable year was filed.

Approved June 24, 2005