



General Assembly

**Substitute Bill No. 1265**

January Session, 2005

\* SB01265FIN\_\_040405\_\_ \*

**AN ACT CONCERNING PENALTIES FOR FAILURE TO REPORT LISTED TRANSACTIONS.**

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

1 Section 1. (NEW) (*Effective from passage and applicable to any open tax*  
2 *period*) A penalty is hereby imposed on every person who engages in  
3 activities described in Section 6700(a) of the Internal Revenue Code of  
4 1986, or any subsequent corresponding internal revenue code of the  
5 United States, as from time to time amended, and who is subject to the  
6 fifty per cent penalty imposed thereunder, whether or not such penalty  
7 has been imposed, where such activities affect tax returns required to  
8 be filed with the Commissioner of Revenue Services. The amount of  
9 the penalty imposed hereunder shall be equal to fifty per cent of the  
10 gross income derived from, or to be derived from, such activities by  
11 such person.

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 Section 12-233 of the general statutes is repealed and the  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

15 (a) (1) The commissioner shall [, (1)] examine the tax return filed  
16 under this chapter by a taxpayer and may make such further audit or  
17 investigation as the commissioner deems necessary, and if the  
18 commissioner determines that there is a deficiency with respect to the  
19 payment of any tax due under this chapter, the commissioner shall

20 notify the taxpayer thereof. Except as otherwise provided in this  
21 section, the commissioner shall (A) in the case of a return on which an  
22 operating loss is not reported, [within] not later than three years after  
23 the due date for the filing of such return or [within] not later than three  
24 years after the date on which such return was received by [him] such  
25 commissioner, whichever period expires later, or [(2)] (B) in the case of  
26 a return on which an operating loss is reported, [within] not later than  
27 three years after the due date or the date of receipt by the  
28 commissioner, whichever period expires later, of the return on which a  
29 carry-over of such loss is fully utilized or deemed fully utilized  
30 because such loss is not available for deduction in any subsequent  
31 income year, examine it and, in case any error is disclosed by such  
32 examination, shall [within thirty days after such disclosure, notify the  
33 taxpayer thereof] mail a notice of deficiency assessment to the  
34 taxpayer. Where, within the sixty-day period ending on the day on  
35 which the time prescribed in this section for mailing a notice of  
36 deficiency assessment for any income year would otherwise expire, the  
37 commissioner receives a written document signed by such taxpayer  
38 showing that such taxpayer owes an additional amount of tax for such  
39 income year, the commissioner then shall have up to sixty days after  
40 the day such written document is received in which to mail a notice of  
41 deficiency assessment.

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

47 (3) In the case of an omission from gross income of an amount  
48 properly includible therein that is in excess of twenty-five per cent of  
49 the amount of gross income stated in the return, a notice of deficiency  
50 assessment may be mailed to the taxpayer at any time not later than six  
51 years after the return was filed. For purposes of this subdivision, there  
52 shall not be taken into account any amount that is omitted from gross  
53 income stated in the return if such amount is disclosed in the return or

54 in a statement attached to the return, in a manner adequate to apprise  
55 the commissioner of the nature and amount of such item.

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

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

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

80 (3) Any decision rendered by any federal court holding that a  
81 taxpayer has filed a fraudulent return with the Director of Internal  
82 Revenue shall subject the taxpayer to the penalty imposed by this  
83 section without the necessity of further proof thereof, except when it  
84 can be shown that the return to the state so differed from the return to  
85 the federal government as to afford a reasonable presumption that the

86 attempt to defraud did not extend to the return to the state.

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

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

108 (e) For purposes of this section, a tax return filed under this chapter  
109 before the last day prescribed by law or by any regulation adopted  
110 pursuant to this chapter for the filing of such return, determined  
111 without regard to any extension of time for filing, shall be deemed to  
112 be filed on such last day.

113 Sec. 3. Subsection (a) of section 12-728 of the general statutes is  
114 repealed and the following is substituted in lieu thereof (*Effective from*  
115 *passage and applicable to taxable years commencing on or after January 1,*  
116 *2005*):

117 (a) (1) After a final return pursuant to the provisions of this chapter

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

131 (2) When it appears that any part of the deficiency for which a  
132 deficiency assessment is made is due to negligence or intentional  
133 disregard of the provisions of this chapter or regulations adopted  
134 thereunder, there shall be imposed a penalty equal to ten per cent of  
135 the amount of such deficiency assessment. When it appears that any  
136 part of the deficiency for which a deficiency assessment is made is due  
137 to fraud or intent to evade the provisions of this chapter or regulations  
138 adopted thereunder, there shall be imposed a penalty equal to  
139 twenty-five per cent of the amount of such deficiency assessment.  
140 When it appears that any part of the deficiency for which a deficiency  
141 assessment is made is due to failure to disclose a listed transaction, as  
142 defined in Section 6707A of the Internal Revenue Code of 1986, or any  
143 subsequent corresponding internal revenue code of the United States,  
144 as from time to time amended, on the taxpayer's federal tax return,  
145 there shall be imposed a penalty equal to seventy-five per cent of the  
146 amount of such deficiency assessment.

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

149 (4) Any decision rendered by any federal court holding that a  
150 taxpayer has filed a fraudulent return with the Director of Internal

151 Revenue shall subject the taxpayer to the twenty-five per cent penalty  
 152 imposed by this subsection without the necessity of further proof  
 153 thereof, except when it can be shown that the return to the state so  
 154 differed from the return to the federal government as to afford a  
 155 reasonable presumption that the attempt to defraud did not extend to  
 156 the state.

157 Sec. 4. Subsection (c) of section 12-733 of the general statutes is  
 158 repealed and the following is substituted in lieu thereof (*Effective from*  
 159 *passage and applicable to taxable years commencing on or after January 1,*  
 160 *2005*):

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

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

167 (3) If a taxpayer fails to disclose a listed transaction, as defined in  
 168 Section 6707A of the Internal Revenue Code, on the taxpayer's federal  
 169 tax return, a notice of deficiency assessment may be mailed to the  
 170 taxpayer at any time not later than six years after the return required  
 171 under this chapter for the same taxable year was filed.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to any open tax period</i>	New section
Sec. 2	<i>from passage and applicable to income years commencing on or after January 1, 2005</i>	12-233

Sec. 3	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-728(a)
Sec. 4	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-733(c)

**FIN**      *Joint Favorable Subst.*