

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 25(a)(3); 171, subdivision First; 697(a); and 1096(a).

Section 25(a)(3) of the Tax Law, which was added by Chapter 61 (Part N) of the Laws of 2005, provides the Commissioner of Taxation and Finance the authority to issue regulations regarding New York reportable transactions. Section 171, Subdivision First authorizes the Commissioner to make rules and regulations, which are consistent with law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Sections 697(a) and 1096(a) provide the authority for the Commissioner to make such rules and regulations as are necessary to administer the personal income tax and the franchise taxes.

2. Legislative objectives: This rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner equitably administer the provisions of the Tax Law. As part of an effort to curtail the use of abusive tax shelters, section 25 of the Tax Law was added by Chapter 61 (Part N) of the Laws of 2005 to require taxpayers and others to disclose to the Department of Taxation and Finance information relating to transactions that present the potential for tax avoidance subject to penalties imposed by Chapter 61 (Part N) for failure to disclose or for understatement of tax attributable to such transactions. Section 25(a)(1) requires the disclosure of information that is reported to the Internal Revenue Service. Section 25(a)(2) requires the disclosure of New York reportable transactions, as prescribed by the Commissioner pursuant to section 25(a)(3). This rule exercises this authority to prescribe, as New York reportable transactions, certain types of transactions that have the potential to be tax avoidance transactions under Articles 9, 9-A, 22, 32 or 33 of the Tax Law.

3. Needs and benefits: The purpose of this rule is to provide a definition of a New York reportable transaction and the disclosure requirements for participants in New York reportable transactions. The definition of a New York reportable transaction and the related disclosure requirements provides the Department with information necessary to evaluate potential tax avoidance transactions. The promulgation of these regulations will also fulfill the statutory requirement that the Commissioner must define a New York reportable transaction before the Department identifies a transaction as a New York listed transaction.

The definition of a New York reportable transaction provides a description of three categories of New York reportable transactions. The New York reportable transaction amendments largely conform to Federal provisions relating to reportable transactions. The structure and content of the proposed amendments are analogous to Treasury Regulations §1.6011-4, *Requirement of statement disclosing participation in certain transactions by taxpayers*. The categories chosen were the types of arrangements that could be designed for the purpose of avoiding New York tax, and affect a taxpayer's New York State tax position while not having a federal tax effect. Taxpayers will benefit from this parallel design since they already are familiar with the requirements of the federal provisions. Additionally, this information will assist regulated parties in determining if certain transactions they have participated in are considered New York reportable transactions. The reporting requirements are limited to narrowly circumscribed types of transactions that a taxpayer would have reason to know are designed for State tax avoidance purposes. Tax preparers will need to be aware of the reporting requirements so that they may properly advise their clients of their responsibility to disclose New York reportable transactions.

4. Costs:

(a) Costs to regulated parties: The rule will impose new reporting, recordkeeping and other compliance costs on those regulated parties that have participated in New York reportable transaction. Based on the Federal estimates for the comparable Federal Form 8886, the reporting form will take three hours for

record keeping, two hours for learning about the law or the form, and two hours for preparing the form, for a total of seven hours. Assuming an hourly rate of \$80 for accountant fees, the additional cost would be \$560 for each required disclosure.

(b) Costs to the agency and to the State and local governments for the implementation and continuation of this rule: It is estimated that the implementation and continued administration of this rule will not impose any costs upon this agency, New York State, or its local governments.

(c) Information and methodology: These conclusions are based upon an analysis of the rule by the Department's Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau and, as discussed above, estimates for preparing a similar federal form.

5. Local government mandates: There are no mandates imposed on local governments by these amendments.

6. Paperwork: These amendments only impose paperwork and reporting requirements on those regulated parties who participate in New York reportable transactions.

7. Duplication: These amendments do not duplicate any other requirements.

8. Alternatives: For the reasons stated in Part 3, Needs and Benefits, no significant alternatives were considered.

9. Federal standards: The rule does not exceed any minimum Federal standards for the same or similar subject area. Section 25 of the Tax Law requires the disclosure of federal reportable transactions to the Department. In defining New York reportable transactions, the rule is modeled after comparable Federal rules, but includes only those types of transactions that could be tailored to avoid New York taxes.

10. Compliance schedule: The rule is effective upon publication of the Notice Adoption in the State Register and shall apply to taxable years beginning on or after January 1, 2006. The first possible disclosure of

a New York reportable transaction would be by a 2006 calendar year taxpayer with their 2006 tax return due on March 15, 2007.