



Listed Transactions and Related State Reporting Requirements

Policy Position

Position: *State listed and other reportable transaction rules must be limited to those categories and transactions identified by the Internal Revenue Service. Filing requirements, timing and penalties should be uniform across adopting states. Taxpayers must never be required to determine whether their filing decisions among states would be considered by any state as inconsistent or to routinely disclose data regarding their filing decisions in one state to any other state. A taxpayer's compliance with state and local tax laws must be determined on a state-by-state basis, and participation in one state's voluntary compliance initiative/amnesty program or compliance with one state's reportable transaction disclosure rules does not affect the taxpayer's filing obligations in any other state.*

Explanation: The federal government carefully developed, both through numerous hearings before Congress and multiple iterations of Treasury Regulations, finely balanced laws and rules regarding when certain transactions or situations bearing indicia common to abusive tax avoidance transactions must be disclosed to the IRS. Such laws have sought to balance the administrative burden imposed on taxpayers with the need for the government to timely and efficiently prevent abuse of our tax system. The laws aim to: a) provide the IRS with information that otherwise may be intentionally hidden by taxpayers to avoid detection; b) provide the IRS with information that may be difficult to discover because of the complexity of the tax system or because of the limited resources available for audits; and c) provide a barrier to taxpayers engaging in actual abusive tax avoidance transactions by increasing the chances of being discovered without discouraging taxpayers from engaging in legitimate transactions because of increased compliance or uncertainty costs.

State income tax systems generally rely on the federal income tax as a starting point for calculating state tax. Thus, the same theories, considerations, and compromises that are relevant at the federal level apply at the state level. Additional reporting and disclosure obligations at the state level are unlikely to add significant benefits beyond what the federal system provides while at the same time are likely to exponentially increase the filing burden on multistate taxpayers.

If found to be necessary due to a state's unique tax system or widespread abuse of an item specific to state taxes that is not relevant at the federal level, state-specific reporting must:

- 1) Be limited only to the category of listed transactions. Listed transactions are a subset of reportable transactions and are specific transactions designated by the tax authority as abusive. Such designations should describe a transaction specifically, not generally, and allow for some form of public comment to ensure that the type of transaction identified is clear and no broader than necessary. The description of a listed transaction must be carefully crafted to avoid covering legitimate transactions, including those transactions that do lower or alter a taxpayer's tax liability.
- 2) Adopt all state-specific listed transactions through legislative process. Classifying otherwise legitimate transactions as "abusive" should occur through careful legislative consideration and not by administrative fiat.

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- 3) Never include additional general reportable transaction rules beyond the listed transactions category. The federal reportable transaction categories cover broad tax, accounting, corporate, and behavioral categories that are applicable at all levels of taxation. Because these categories do not rely on any type of tax system for their legitimacy or coverage, these categories cannot be improved upon or expanded at the state level without costly disruptions to the carefully crafted balancing of costs to taxpayers and governments versus increased compliance provided by the existing rules.
- 4) Never expand reporting to require any type of comparison of a taxpayer's filing positions between states. Such positions are inherently not comparable and are irrelevant to determining a taxpayer's compliance with any state's laws. State laws, regulations, interpretations, judicial decisions and administrative practice vary so much from state to state that any meaningful comparison of raw numbers is impossible. Further, since it is perfectly legitimate under our federal system for a sovereign state with the exact same statutory language as another to interpret the words differently, there can be no useful purpose for a state to compare how a taxpayer filed in one state to another in deciding whether the taxpayer is complying with the substantive law. In addition, filing a return is just the first step in the process of determining an ultimate outcome on "filing position"; until the taxpayer is audited and/or the relevant state statute closes, no filing position can be considered "final".