

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.5070 List of Investors in Potentially Abusive Tax Shelters and Reportable Transactions

TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.5070 List of Investors in Potentially Abusive Tax Shelters and Reportable Transactions

- a) Requirement to Furnish List of Investors in Potentially Abusive Tax Shelters
 - 1) In General. For the period beginning July 30, 2004 and ending October 22, 2004, under IITA Section 1405.6(a), any person required to maintain a list with respect to a "potentially abusive tax shelter" in accordance with 26 USC 6112 and 26 CFR 301.6112-1 (2007) and who is required to furnish the list to the Internal Revenue Service shall furnish the list to the Department at the time and in the manner provided under subsection (b) of this Section. 26 USC 6111 and 6112 were amended by Public Law 108-357 to delete any reference to "tax shelter". Accordingly, this subsection (a)(1) does not apply after October 22, 2004, the effective date of Public Law 108-357.
 - 2) Special Rule for Listed Transactions. For the period beginning July 30, 2004 and ending January 10, 2008, under IITA Section 1405.6(b), any person required for federal income tax purposes to maintain a list with respect to a transaction entered into on or after February 28, 2000 that becomes a listed transaction at any time shall furnish the list to the Department, regardless of whether the list is furnished to the Internal Revenue Service, at the time and in the manner provided under subsection (b) of this Section. IITA Section 1405.6(b) was repealed by Public Act 95-707. Accordingly, this subsection (a)(2) does not apply after January 10, 2008, the effective date of Public Act 95-707.
 - 3) Nexus with this State. Furnishing an investor list with respect to the periods specified in this subsection (a) is required only if the potentially abusive tax shelter or the listed transaction has nexus with this State as determined under this subsection (a)(3).
 - A) Potentially Abusive Tax Shelters
 - i) Prior to January 11, 2008, IITA Section 1405.6(d) provided that, if the transaction with respect to which list maintenance is required is a tax shelter (other than a listed transaction) as defined in 26 USC 6111, then the provisions of IITA Section 1405.6(a) and subsection (a) of this Section do not apply unless the tax shelter is:
 - Organized in Illinois,

- Doing Business in Illinois, or
 - Deriving income from sources within Illinois.
- ii) The requirements of this subsection (a)(3)(A) apply only to "tax shelters" and so apply only to potentially abusive tax shelters under IITA Section 1405.6(a) and subsection (a)(1), and not to listed transactions under IITA Section 1405.6(b) or subsection (a)(2). As noted in subsection (a)(1), subsection (a)(1) has no application after October 22, 2004.
- B) Listed Transactions. A listed transaction has sufficient nexus with Illinois to be subject to the requirement to furnish investor lists if, at the time the transaction is entered into, the transaction has one or more investors that is an Illinois taxpayer.
- 4) The term "listed transaction" shall have the same meaning as defined in Section 100.5060 of Subpart N of this Part.
- b) Time and Manner for Furnishing List. The provisions of this subsection (b) set forth the time and manner for furnishing investor lists with respect to the periods specified in subsection (a) of this Section.
- 1) Transactions (Other Than Listed Transactions)
- A) Any list that must be furnished to the Department with respect to the period specified in subsection (a)(1) of this Section shall be furnished to the Department by the later of:
- i) The date on which the list is required to be furnished to the Internal Revenue Service, or
 - ii) February 10, 2008.
- B) The list shall include all of the same information required to be included for federal income tax purposes (including any statement regarding claims of privilege), plus any additional information required by the Department by published guidance. As noted in subsection (a)(1), subsection (a)(1) has no application after October 22, 2004.
- 2) Listed Transactions
- A) Any list that must be furnished to the Department with respect to the period specified in subsection (a)(2) that includes a listed transaction having nexus with Illinois shall be furnished as provided in this Section, regardless of whether the list is furnished to the Internal Revenue Service, by the later of:
- i) 60 days after entering into the transaction having nexus with Illinois,

- ii) 60 days after the transaction having nexus with Illinois becomes a listed transaction, or
 - iii) February 10, 2008.
 - B) The list shall include all of the same information required to be included for federal income tax purposes (including any statement regarding claims of privilege) as of the date the investor list is required to be furnished to the Department, plus any additional information required by the Department by published guidance. If, after the date in which a list is required to be furnished to the Department under this subsection (b)(2), a transaction having Illinois nexus is entered into that is required for federal income tax purposes to be included on a list previously furnished the Department, then the previously furnished list must be supplemented no later than 60 days after the transaction is entered into. The supplement must include, with respect to the transaction, all of the same information required to be included on the list for federal income tax purposes. In the event that the requirement to maintain a list with respect to a transaction described in this subsection (b)(2) is suspended under federal law on account of a ruling request at the time disclosure is otherwise required under this Section, the list shall be furnished by the date the federal suspension period terminates.
 - 3) Special Rule. The provisions of this subsection (b)(3) apply to lists that must be furnished to the Department with respect to the period specified in subsection (a)(2). IITA Section 1007(c) allows the Director to rescind all or any portion of the penalty imposed for failure to comply with the requirements of IITA Section 1405.6 when, among other circumstances, imposing the penalty would be against equity and good conscience, or when rescinding the penalty would promote compliance with the requirements of the IITA and effective tax administration. Pursuant to IITA Section 1007(c), with respect to any transaction entered into prior to the time the transaction becomes a listed transaction, no penalty shall be imposed under Section 1007 if the person properly furnishes the list required under this Section not later than 120 days after the transaction becomes a listed transaction. Failure to furnish the list within the time required in this subsection (b)(3) does not preclude rescission of the penalty in accordance with IITA Section 1007(c).
 - 4) Dissolution or Liquidation of Material Advisor. In any case in which a list subject to subsection (a) of this Section is furnished to the Office of Tax Shelter Analysis pursuant to 26 CFR 301.6112-1(f) (2007), the list shall also be furnished to the Department by the date on which the list is required to be furnished to the Internal Revenue Service. The list shall include all of the same information required to be included for federal income tax purposes (including any statement regarding claims of privilege), plus any additional information required by the Department by published guidance.
- c) Exceptions. A list otherwise required to be furnished under subsection (a) of this Section is not required if:

- 1) At the time a list is otherwise required to be furnished to the Department under this Section on the basis that the transaction is a listed transaction, the Internal Revenue Service has removed the identification of transactions that are the same as or substantially similar to the transaction as listed transactions;
 - 2) Before the time in which the list is otherwise required to be furnished to the Department under this Section, the Department makes a determination by published guidance that a list is not required to be furnished with respect to a particular transaction or type of transaction; or
 - 3) With respect to a listed transaction for which, at the time the list is required to be furnished to the Internal Revenue Service, the same list had previously been furnished the Department pursuant to this Section, provided the list furnished the Internal Revenue Service does not contain additional information.
- d) Material Advisors of Reportable Transactions
- 1) On and after January 11, 2008, *any person required to maintain a list under IRC section 6112 shall furnish a duplicate of that list to the Department not later than the time the list is required to be furnished to the Internal Revenue Service, or, if earlier, the date of written request by the Department.* [35 ILCS 5/1405.6(a)]
 - 2) Reportable Transactions Subject to this Section. A copy of the list required to be maintained by a person under IRC section 6112 and 26 CFR 301.6112-1 shall be subject to the requirements of this subsection (d) if the person is a material advisor with respect to a transaction having nexus with Illinois. A person is a material advisor with respect to a transaction having nexus with Illinois if:
 - A) The person is a material advisor with respect to the transaction under IRC section 6112 and 26 CFR 301.6112-1; and
 - B) The person is a material advisor with respect to the transaction as described in Section 100.5080(c)(2) of this Subpart N.
 - 3) Furnishing of Lists. Each person who is a material advisor, as described in subsection (d)(2), with respect to a transaction having nexus with Illinois as described in subsection (d)(2) must furnish a copy of the list to the Department not later than:
 - A) The date the list (or a component of the list) is required to be furnished to the Internal Revenue Service under 26 CFR 301.6112-1;
 - B) The date the list (or component of the list) is required to be furnished to the Internal Revenue Service on behalf of a person by another material advisor pursuant to a designation agreement under 26 CFR 301.6112-1(f); or
 - C) If earlier than the date specified in subsections (d)(3)(A) and (B), the date specified in a written request issued by the Department.
 - 4) Designation Agreements. If the obligation under IRC section 6112 and 26 CFR 301.6112-1 of a material advisor with respect to a transaction having nexus with

Illinois is satisfied pursuant to a designation agreement under 26 CFR 301.6112-1(f) by a person that is not a material advisor with respect to a transaction having nexus with Illinois, the material advisor with respect to a transaction having nexus with Illinois must furnish the list at the time required under this subsection (d). The list may be filed on the material advisor's behalf by the person designated under the designation agreement.

- e) Protective Filing. If a person required to furnish a list under this Section believes in good faith that the State lacks jurisdiction to require the person to comply with this Section, the person may file a statement with the Department setting forth the basis of any claim of lack of jurisdiction. If the statement contains a detailed description of the transaction that describes both the tax structure and its expected tax treatment, discloses the number of investors the person is required to include on the list, and includes an explanation of the basis for believing that disclosure is not required, then the filing of the statement shall abate the penalty otherwise imposed under IITA Section 1007 for failing to furnish a list. However, failure to furnish the statement does not preclude rescission of the penalty in accordance with IITA Section 1007(c).
- f) Place for Filing. Lists required to be furnished to the Department under this Section shall be sent to:

Illinois Department of Revenue
P.O. Box 19029
Springfield IL 62794-9029

(Source: Amended at 33 Ill. Reg. 2306, effective January 23, 2009)