

## Reporting Requirements-SB 614

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 18407 is added to the Revenue and Taxation Code, to read:

18407. Section 6011 of the Internal Revenue Code, relating to general requirement of return, statement, or list, shall apply, except as otherwise provided.

(a) Section 6011(a) of the Internal Revenue Code, relating to general rule, is modified as follows:

(1) The phrase "any person liable for any tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001) or this part," shall be substituted for the phrase "when required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title," contained therein.

(2) "Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board" shall be substituted for "Secretary."

(3) To additionally provide that "reportable transaction" includes any transaction of a type that the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or the Franchise Tax Board under this section for California income or franchise tax purposes determines as having a potential for tax avoidance or evasion including deductions, basis, credits, entity classification, dividend elimination, or omission of income, and shall be reported on the return or the statement required to be made.

(4) To additionally provide that "listed transaction" includes any transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board under this section for California income or franchise tax purposes, as a tax avoidance transaction including deductions, basis, credits, entity classification, dividend elimination, or omission of income and shall be reported on the return or statement required to be made.

(A) The Franchise Tax Board shall identify and publish "listed transactions" (whether identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board) through the use of Franchise Tax Board Notices or other published positions. In addition, the "listed transactions" identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(B) The Franchise Tax Board shall conduct a public outreach program to make taxpayers aware of the new and increased penalties associated with the use of tax avoidance transactions including deductions, basis, credits, entity classification, dividend elimination, or omission of income.

(5) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to paragraph (4).

(b) Section 6011(b) of the Internal Revenue Code, relating to identification of taxpayer, does not apply and, in lieu thereof Section 18408 shall apply.

(c) Section 6011(c) of the Internal Revenue Code, relating to returns, etc., of DISCS and former DISCS and FSC's and former FSC's, does not apply.

(d) Section 6011(d) of the Internal Revenue Code, relating to authority to require information concerning Section 912 allowances, does not apply.

(e) Section 6011(e) of the Internal Revenue Code, relating to regulations requiring returns on magnetic media, etc., shall take into account Section 18408 and shall also include the modifications made to Section 6011(e) of the Internal Revenue Code by Section 18408.

(f) Section 6011(f)(2) of the Internal Revenue Code, relating to incentives, does not apply.

SEC. 2. Section 18628 of the Revenue and Taxation Code is amended to read:

18628. (a) Section 6111 of the Internal Revenue Code, relating to

registration of tax shelters, applies, except as otherwise provided.

(b) (1) Except as provided in subdivision (g), a tax shelter organizer is required to send a duplicate of the federal registration information, if applicable, or the same information required for federal tax shelters for California tax shelters to the Franchise Tax Board not later than the day on which the first offering for sale of interests in that tax shelter occurs.

(2) (A) The information provided to the Franchise Tax Board pursuant to paragraph (1) shall also include any other information required by a Franchise Tax Board Notice.

(B) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any additional information requested under this section.

(c) Any person required to register under Section 6111 of the Internal Revenue Code who receives a tax registration number from the Secretary of the Treasury shall, within 30 days after request by the Franchise Tax Board, file a statement of that registration number.

(d) Section 6111(b) of the Internal Revenue Code, relating to inclusion of tax shelter identification numbers on returns, applies.

(e) Section 6111(c)(2)(A) of the Internal Revenue Code is amended by substituting the phrase "under subtitle A of the Internal Revenue Code or under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) of the Revenue and Taxation Code" for "under subtitle A."

(f) (1) Section 6111(d) of the Internal Revenue Code is modified to further provide that, for purposes of this section and Section 18648, the term "tax shelter" includes any listed transaction (as defined under subdivision (a) of Section 18407).

(2) Section 6111(d)(1)(A) of the Internal Revenue Code is amended by substituting the phrase "avoidance or evasion of federal income tax or California income or franchise tax" for "avoidance or evasion of Federal income tax."

(g) The registration requirements of this section apply to any tax shelter (within the meaning of Section 6111 of the Internal Revenue Code, as modified by this section) that additionally satisfies any of

the following conditions:

- (1) Organized in this state.
- (2) Doing business in this state.
- (3) Deriving income from sources in this state.
- (4) At least one of its investors is a California taxpayer.

(h) In addition to the requirements set forth in subdivision (a), for any transactions entered into on or after February 28, 2000, that become listed transactions (as defined under Section 6011(a) of the Internal Revenue Code) at any time, those transactions shall be required to be registered with the Franchise Tax Board by the later of:

- (1) Sixty days after entering into the transaction.
- (2) Sixty days after the transaction becomes a listed transaction,

or

(i) In addition to the requirements set forth in subdivisions (a) and (h), for any transactions entered into on or after September 2, 2003, that are specifically identified by the Franchise Tax Board for California income or franchise tax purposes (under the authority of paragraph (4) of subdivision (a) of Section 18407) as a "listed transaction" at any time those transactions shall be required to be registered with the Franchise Tax Board by the later of:

- (1) Sixty days after entering into the transaction.
- (2) Sixty days after the transaction becomes a listed transaction.

(3) April 30, 2004.

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SEC. 3. Section 18648 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 18648 is added to the Revenue and Taxation Code, to read:

18648. (a) Section 6112 of the Internal Revenue Code, relating to organizers and sellers of potentially abusive tax shelters that must keep lists of investors, applies, except as otherwise provided.

(b) Section 6112 of the Internal Revenue Code is modified by substituting the phrase "Secretary or the Franchise Tax Board" for the word "Secretary" each place it appears.

(c) The requirement to maintain lists under this section shall

apply to any organizer, seller, or material advisor of a potentially abusive tax shelter (within the meaning of Section 6112 of the Internal Revenue Code, as modified by this section) that additionally satisfies any of the following conditions:

- (1) Organized in this state.
- (2) Doing business in this state.
- (3) Deriving income from sources in this state.
- (4) At least one of its investors is a California taxpayer.

(d) (1) Notwithstanding any regulation issued under Section 6112 of the Internal Revenue Code, the list required to be maintained by this section for listed transactions, as defined in subdivision (a) Section 18407, shall be maintained in the form and manner prescribed by the Franchise Tax Board.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any requirement prescribed by the Franchise Tax Board under this section.

(3) For transactions entered into on or after February 28, 2000, that become listed transactions (as defined under Section 6011(a) of the Internal Revenue Service at any time, the lists shall be provided to the Franchise Tax Board by the later of:

- (A) Sixty days after entering into the transaction.
- (B) Sixty days after the transaction becomes a listed transaction;

or

- (C) April 30, 2004.

(4) For transactions entered into on or after September 2, 2003, that are specifically identified by the Franchise Tax Board of California income or franchise tax purposes (under the authority of paragraph (4) of subdivision (a) of Section 18407) as a "listed transaction" at any time, the list shall be provided to the Franchise Tax Board by the later of:

- (A) Sixty days after entering into the transaction.
- (B) Sixty days after the transaction becomes a listed transaction.

- (C) April 30, 2004.

(e) The terms "organizer," "seller," and "material advisor" mean a person that meets any of the requirements of this section or Section

6112 of the Internal Revenue Code or regulations issued thereunder.