

CHAPTER 75

TAXATION

HOUSE BILL 09-1093

BY REPRESENTATIVE(S) Levy, McGihon, Benefield, Judd, Miklosi, Ferrandino, Fischer, Gagliardi, Green, Merrifield, Pommer, Solano, Apuan, Frangas, Kerr A., Labuda, McFadyen, Middleton, Pace, Primavera, Ryden, Hullinghorst, Kefalas, Todd; also SENATOR(S) Veiga, Carroll M.

AN ACT**CONCERNING ADDITIONAL INCOME TAX REPORTING REQUIREMENTS FOR A CORPORATE TAXPAYER.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is the existing policy of the state to tax all income that is apportioned based on a taxpayer's activities within the state;

(b) The purpose of the "Colorado C Corporation Income Tax Act" is to tax all the income that is attributable to sources within the state based on the economic reality of the C corporation and its affiliated corporations' business operations regardless of the formal structure used for the business;

(c) It is the existing tax policy of the state that any transactions that have no business purpose or do not have any economic effect may not be used to avoid tax liability apportioned based on the taxpayer's activities within the state;

(d) It is the purpose of a taxpayer's filed return to clearly reflect all the income reasonably attributable to the taxpayer's activities within the state, as calculated by the taxpayer pursuant to the income tax laws of the state; and

(e) The purpose of this legislation is to ensure that taxpayer returns reflect all the income that is attributable to sources within the state in a form that most clearly reflects the true economic reality of a C corporation and its affiliated corporations' business operations regardless of the formal structure of the business.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. 39-22-501, Colorado Revised Statutes, is amended to read:

39-22-501. Taxation of regulated investment companies. (1) (a) FOR PURPOSES OF THIS ARTICLE, A "REGULATED INVESTMENT COMPANY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 851 OF THE INTERNAL REVENUE CODE.

(b) ~~In the case of a corporation which qualifies as a "regulated investment company" under the provisions of the internal revenue code,~~ For purposes of this article, the "net income" of ~~such corporation~~ A REGULATED INVESTMENT COMPANY in each year in which ~~such~~ THE corporation is taxed as a regulated investment company for federal income tax purposes shall be the "investment company taxable income" of such corporation, adjusted as provided in section 39-22-304 (2) and (3).

(2) (a) FOR PURPOSES OF THIS ARTICLE, A "CAPTIVE REGULATED INVESTMENT COMPANY" MEANS A REGULATED INVESTMENT COMPANY OF WHICH THE SHARES OR BENEFICIAL INTERESTS ARE NOT REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET AND OF WHICH MORE THAN FIFTY PERCENT OF THE VOTING POWER OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES ARE OWNED OR CONTROLLED, DIRECTLY, INDIRECTLY, OR CONSTRUCTIVELY, BY A SINGLE ENTITY THAT IS:

(I) TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION UNDER THE INTERNAL REVENUE CODE; AND

(II) NOT EXEMPT FROM FEDERAL INCOME TAX PURSUANT TO THE PROVISIONS OF SECTION 501 (a) OF THE INTERNAL REVENUE CODE.

(b) ANY VOTING STOCK IN A REGULATED INVESTMENT COMPANY THAT IS HELD IN A SEGREGATED ASSET ACCOUNT OF A LIFE INSURANCE CORPORATION, AS DESCRIBED IN SECTION 817 OF THE INTERNAL REVENUE CODE, SHALL NOT BE TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING WHETHER A REGULATED INVESTMENT COMPANY IS A CAPTIVE REGULATED INVESTMENT COMPANY.

SECTION 3. 39-22-503, Colorado Revised Statutes, is amended to read:

39-22-503. Taxation of real estate investment trusts - definitions. (1) (a) ~~for the case of an organization which qualifies as~~ FOR PURPOSES OF THIS ARTICLE, a "real estate investment trust" ~~under the provisions~~ SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 856 of the internal revenue code.

(b) For purposes of this article, the "net income" of ~~such organization~~ A REAL ESTATE INVESTMENT TRUST in each year in which ~~such organization~~ THE TRUST is taxed as a real estate investment trust for federal income tax purposes shall be the "real estate investment trust taxable income" of ~~such organization~~ THE TRUST as computed for federal income tax purposes and adjusted as provided in section 39-22-304 (2) and (3).

(2) (a) FOR PURPOSES OF THIS ARTICLE, A "CAPTIVE REAL ESTATE INVESTMENT TRUST" MEANS A REAL ESTATE INVESTMENT TRUST OF WHICH THE SHARES OR BENEFICIAL INTERESTS ARE NOT REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET AND OF WHICH MORE THAN FIFTY PERCENT OF THE VOTING

POWER OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES ARE OWNED OR CONTROLLED, DIRECTLY, INDIRECTLY, OR CONSTRUCTIVELY, BY A SINGLE ENTITY THAT IS:

(I) TREATED AS AN ASSOCIATION TAXABLE AS A CORPORATION UNDER THE INTERNAL REVENUE CODE; AND

(II) NOT EXEMPT FROM FEDERAL INCOME TAX PURSUANT TO THE PROVISIONS OF SECTION 501 (a) OF THE INTERNAL REVENUE CODE.

(b) A "CAPTIVE REAL ESTATE INVESTMENT TRUST" SHALL NOT INCLUDE A REAL ESTATE INVESTMENT TRUST THAT IS INTENDED TO BE REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET AND THAT SATISFIES THE REQUIREMENTS OF SECTION 856 (a) (5) AND (a) (6) OF THE INTERNAL REVENUE CODE BY REASON OF SECTION 856 (h) (2) OF THE INTERNAL REVENUE CODE; EXCEPT THAT, IF SUCH REAL ESTATE INVESTMENT TRUST DOES NOT BECOME REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET WITHIN ONE YEAR OF THE DATE ON WHICH IT FIRST BECOMES A REAL ESTATE INVESTMENT TRUST, SUCH REAL ESTATE INVESTMENT TRUST SHALL BE DEEMED TO BE A CAPTIVE REAL ESTATE INVESTMENT TRUST.

(3) FOR PURPOSES OF THIS SECTION, THE CONSTRUCTIVE OWNERSHIP RULES OF SECTION 318 (a) OF THE INTERNAL REVENUE CODE, AS MODIFIED BY SECTION 856 (d) (5) OF THE INTERNAL REVENUE CODE, SHALL APPLY IN DETERMINING THE OWNERSHIP OF STOCK, ASSETS, OR NET PROFITS OF ANY PERSON.

(4) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ASSOCIATION TAXABLE AS A CORPORATION UNDER THE INTERNAL REVENUE CODE" SHALL NOT INCLUDE:

(I) ANY REAL ESTATE INVESTMENT TRUST OTHER THAN A CAPTIVE REAL ESTATE INVESTMENT TRUST;

(II) ANY QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARY OTHER THAN A QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARY OF A CAPTIVE REAL ESTATE INVESTMENT TRUST;

(III) ANY LISTED AUSTRALIAN PROPERTY TRUST; OR

(IV) ANY QUALIFIED FOREIGN ENTITY.

(b) "AUSTRALIAN PROPERTY TRUST" MEANS AN AUSTRALIAN UNIT TRUST REGISTERED AS A MANAGED INVESTMENT SCHEME UNDER THE AUSTRALIAN CORPORATIONS ACT IN WHICH THE PRINCIPAL CLASS OF UNITS IS LISTED ON A RECOGNIZED STOCK EXCHANGE IN AUSTRALIA AND IS REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET OR AN ENTITY ORGANIZED AS A TRUST, PROVIDED THAT A LISTED AUSTRALIAN PROPERTY TRUST OWNS OR CONTROLS, DIRECTLY OR INDIRECTLY, SEVENTY-FIVE PERCENT OR MORE OF THE VOTING POWER OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES OF SUCH TRUST.

(c) "QUALIFIED FOREIGN ENTITY" MEANS A CORPORATION, TRUST, ASSOCIATION,

OR PARTNERSHIP THAT IS ORGANIZED OUTSIDE THE LAWS OF THE UNITED STATES AND THAT SATISFIES THE FOLLOWING CRITERIA:

(I) AT LEAST SEVENTY-FIVE PERCENT OF THE ENTITY'S TOTAL ASSET VALUE AT THE CLOSE OF ITS TAXABLE YEAR IS REPRESENTED BY REAL ESTATE ASSETS AS DEFINED IN SECTION 856 (c) (5) (B) OF THE INTERNAL REVENUE CODE, CASH AND CASH EQUIVALENTS, OR UNITED STATES GOVERNMENT SECURITIES;

(II) THE ENTITY IS NOT SUBJECT TO TAX ON AMOUNTS DISTRIBUTED TO ITS BENEFICIAL OWNERS OR IS EXEMPT FROM ENTITY-LEVEL TAXATION;

(III) THE ENTITY DISTRIBUTES AT LEAST EIGHTY-FIVE PERCENT OF ITS TAXABLE INCOME, AS COMPUTED IN THE JURISDICTION IN WHICH IT IS ORGANIZED, TO THE HOLDERS OF ITS SHARES OR CERTIFICATES OF BENEFICIAL INTEREST ON AN ANNUAL BASIS;

(IV) NOT MORE THAN TEN PERCENT OF THE VOTING POWER OR VALUE IN SUCH ENTITY IS HELD, DIRECTLY, INDIRECTLY, OR CONSTRUCTIVELY, BY A SINGLE ENTITY OR INDIVIDUAL, OR THE SHARES OR BENEFICIAL INTERESTS OF SUCH ENTITY ARE REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET; AND

(V) THE ENTITY IS ORGANIZED IN A COUNTRY THAT HAS A TAX TREATY OR AGREEMENT WITH THE UNITED STATES.

(d) "QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARY" HAS THE SAME MEANING AS SET FORTH IN SECTION 856 (i) OF THE INTERNAL REVENUE CODE.

SECTION 4. Part 6 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPART to read:

SUBPART 2
REPORTABLE TRANSACTIONS

39-22-651. Short title - citation. THIS SUBPART 2 SHALL BE COMPRISED OF SECTIONS 39-22-651 TO 39-22-659 AND MAY BE CITED AS SUBPART 2. THIS SUBPART 2 SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO REPORTABLE TRANSACTIONS ACT".

39-22-652. Definitions. FOR PURPOSES OF THIS SUBPART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COLORADO COMBINED GROUP" MEANS A GROUP OF AFFILIATED C CORPORATIONS REQUIRED OR ALLOWED TO FILE A COMBINED REPORT PURSUANT TO SECTION 39-22-303.

(2) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(3) "INCOME TAX" MEANS A TAX IMPOSED UNDER THIS ARTICLE.

(4) "INCOME TAX RETURN" MEANS A RETURN FILED UNDER SECTION 39-22-601.

(5) "LISTED TRANSACTION" MEANS A TRANSACTION THAT IS:

(a) THE SAME AS, OR SUBSTANTIALLY SIMILAR TO, A TRANSACTION OR ARRANGEMENT SPECIFICALLY IDENTIFIED AS A LISTED TRANSACTION BY THE UNITED STATES SECRETARY OF THE TREASURY IN WRITTEN MATERIALS INTERPRETING THE REQUIREMENTS OF SECTION 6011 OF THE INTERNAL REVENUE CODE;

(b) A TRANSACTION BETWEEN A CAPTIVE REAL ESTATE INVESTMENT TRUST AS DEFINED IN SECTION 39-22-503 (2) AND ITS MORE THAN FIFTY PERCENT BENEFICIAL OWNER AS DESCRIBED IN SECTION 39-22-503 (2) (a); OR

(c) A TRANSACTION BETWEEN A CAPTIVE REGULATED INVESTMENT COMPANY AS DEFINED IN SECTION 39-22-501 (2) AND ITS MORE THAN FIFTY PERCENT BENEFICIAL OWNER AS DESCRIBED IN SECTION 39-22-501 (2) (a).

(6) "MATERIAL ADVISOR" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 6111 OF THE INTERNAL REVENUE CODE.

(7) "REPORTABLE TRANSACTION" MEANS ANY TRANSACTION OR ARRANGEMENT THAT IS THE SAME AS ANY TRANSACTION OR ARRANGEMENT DESCRIBED IN 26 CFR 1.6011-4 (b) (2) TO (b) (6) BUT SHALL NOT INCLUDE ANY TRANSACTIONS SPECIFICALLY EXCLUDED BY THE INTERNAL REVENUE SERVICE.

39-22-653. Taxpayer disclosure of reportable or listed transactions. (1) A TAXPAYER SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION FOR EACH TAXABLE YEAR IN WHICH THE TAXPAYER PARTICIPATES IN A REPORTABLE OR LISTED TRANSACTION.

(2) A TAXPAYER SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL DISCLOSE ANY REPORTABLE OR LISTED TRANSACTION TO THE DEPARTMENT IN A DISCLOSURE STATEMENT AS SPECIFIED IN SUBSECTION (5) OF THIS SECTION; EXCEPT THAT, IN THE CASE OF MULTIPLE TRANSACTIONS DESCRIBED IN SECTION 39-22-652 (5) (b) OR (5) (c) THAT OCCUR WITHIN A SINGLE TAX YEAR, IN LIEU OF A DISCLOSURE FOR EACH TRANSACTION WITH A REGULATED INVESTMENT COMPANY OR A REAL ESTATE INVESTMENT TRUST, A TAXPAYER MAY FILE A DISCLOSURE FOR MULTIPLE TRANSACTIONS WITH A REGULATED INVESTMENT COMPANY OR REAL ESTATE INVESTMENT TRUST SHOWING THE NAME AND OWNERSHIP OF EACH SUCH ENTITY AND EACH SUCH ENTITY'S TOTAL ASSETS AND TOTAL INCOME EARNED PRIOR TO ANY DIVIDEND PAID DEDUCTION.

(3) IF A TAXPAYER PARTICIPATES IN OR HAS PARTICIPATED IN ANY REPORTABLE OR LISTED TRANSACTION FOR ANY PERIOD THAT IS STILL OPEN FOR ASSESSMENT PURSUANT TO SECTION 39-21-107 AS OF THE DUE DATE OF THE TAXPAYER'S INCOME TAX RETURN, THEN THE TAXPAYER SHALL FILE A DISCLOSURE STATEMENT AS SPECIFIED IN SUBSECTION (5) OF THIS SECTION WITH RESPECT TO THE REPORTABLE OR LISTED TRANSACTION.

(4)(a) ANY STATEMENT THAT IS REQUIRED TO BE FILED OR DISCLOSURE REQUIRED TO BE MADE BY THIS SECTION WITH RESPECT TO ANY TAX YEAR FOR WHICH THE RETURN HAS ALREADY BEEN FILED BY A DATE SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION AND THAT IS FILED OR MADE PRIOR TO OR TOGETHER WITH

THE TAXPAYER'S NEXT FILED RETURN SHALL BE CONSIDERED TIMELY FILED OR MADE.

(b) ANY STATEMENT THAT IS REQUIRED TO BE FILED OR DISCLOSURE REQUIRED TO BE MADE BY THIS SECTION WITH RESPECT TO ANY TAX YEAR THE RETURN FOR WHICH HAS NOT BEEN FILED BY A DATE SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION AND THAT IS FILED OR MADE ON OR BEFORE JULY 1, 2010, SHALL BE CONSIDERED TIMELY FILED OR MADE.

(c) THE STATUTE OF LIMITATIONS WITH RESPECT TO ANY RETURN FOR WHICH A STATEMENT IS REQUIRED TO BE FILED OR DISCLOSURE REQUIRED TO BE MADE BY THIS SECTION SHALL BE TOLLED FROM THE EFFECTIVE DATE OF THIS SECTION UNTIL SUCH STATEMENT OR DISCLOSURE IS FILED OR MADE, BUT IN NO EVENT SHALL THE STATUTE OF LIMITATIONS BE TOLLED FOR MORE THAN TWENTY-FOUR MONTHS.

(5) (a) WITH RESPECT TO ANY REPORTABLE TRANSACTION OR WITH RESPECT TO ANY LISTED TRANSACTION AS SPECIFIED IN SECTION 39-22-652 (5) (a), THE TAXPAYER SHALL, AT THE TAXPAYER'S DISCRETION, FILE WITH THE TAXPAYER'S NEXT FILED RETURN A COPY OF THE FEDERAL DISCLOSURE FORM OR A FORM SPECIFIED BY THE DEPARTMENT.

(b) WITH RESPECT TO ANY LISTED TRANSACTION NOT SPECIFIED IN SECTION 39-22-652 (5) (a), THE DEPARTMENT MAY SPECIFY THE FORM AND MANNER OF ANY STATEMENT REQUIRED TO BE FILED OR DISCLOSURE REQUIRED TO BE MADE, WHICH STATEMENT SHALL BE FILED WITH THE TAXPAYER'S NEXT FILED RETURN.

39-22-654. Additional listed transactions - report. (1) THE DEPARTMENT SHALL SUBMIT A REPORT TO THE FINANCE COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, BY JANUARY 31, 2010, AND ON OR BEFORE EVERY JANUARY 31 THEREAFTER, ITS RECOMMENDATION FOR THE INCLUSION OF ANY ADDITIONAL LISTED TRANSACTIONS FOR PURPOSES OF THIS SUBPART 2.

(2) THE DEPARTMENT SHALL CONSULT WITH ANY INTERESTED PARTIES PRIOR TO THE SUBMISSION OF THE REPORT AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

39-22-655. Penalty for failure to disclose a reportable or listed transaction.

(1) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), A TAXPAYER THAT FAILS TO DISCLOSE A REPORTABLE TRANSACTION AS REQUIRED BY SECTION 39-22-653 SHALL BE SUBJECT TO A PENALTY OF UP TO FIFTEEN THOUSAND DOLLARS.

(b) A TAXPAYER THAT FAILS TO DISCLOSE A LISTED TRANSACTION AS REQUIRED BY SECTION 39-22-653 SHALL BE SUBJECT TO A PENALTY OF UP TO FIFTY THOUSAND DOLLARS.

(2) ANY PENALTY IMPOSED BY THIS SECTION SHALL BE IN ADDITION TO ANY OTHER PENALTY IMPOSED BY ARTICLES 21 AND 22 OF THIS TITLE.

(3) FOR PURPOSES OF THIS SECTION, IF TWO OR MORE MEMBERS OF THE SAME COMBINED REPORT OR CONSOLIDATED RETURN PARTICIPATE IN THE SAME

REPORTABLE OR LISTED TRANSACTION, THE PENALTY IMPOSED BY SUBSECTION (1) OF THIS SECTION SHALL ONLY BE IMPOSED ONCE ON THE COMBINED REPORT OR CONSOLIDATED RETURN.

39-22-656. Material advisor - disclosure of reportable or listed transactions.

(1) (a) A MATERIAL ADVISOR SHALL DISCLOSE ANY REPORTABLE OR LISTED TRANSACTION TO THE DEPARTMENT ON A FORM PROVIDED BY THE DEPARTMENT WITHIN SIX MONTHS OF EACH TRANSACTION.

(b) THE DISCLOSURE DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL INCLUDE INFORMATION IDENTIFYING AND DESCRIBING THE REPORTABLE OR LISTED TRANSACTION AND ANY POTENTIAL TAX BENEFITS EXPECTED TO RESULT FROM THE TRANSACTION, AND THE DISCLOSURE MAY INCLUDE OTHER INFORMATION AS REQUIRED BY THE DEPARTMENT BY RULES PROMULGATED IN ACCORDANCE WITH SECTION 39-21-112 (1).

(2) IF A MATERIAL ADVISOR IS REQUIRED TO FILE AN INCOME TAX RETURN DISCLOSING A REPORTABLE TRANSACTION UNDER SECTION 6111 OF THE INTERNAL REVENUE CODE, THE MATERIAL ADVISOR SHALL PROVIDE THE DEPARTMENT WITH A COPY OF THE INCOME TAX RETURN.

39-22-657. Material advisor - maintenance of list. (1) FOR EACH REPORTABLE OR LISTED TRANSACTION, A MATERIAL ADVISOR SHALL MAINTAIN A LIST OF THE PERSONS TO WHICH THE MATERIAL ADVISOR PROVIDES MATERIAL AID, ASSISTANCE, OR ADVICE WITH RESPECT TO ORGANIZING, MANAGING, PROMOTING, SELLING, IMPLEMENTING, INSURING, OR CARRYING OUT A REPORTABLE OR LISTED TRANSACTION.

(2) THE LIST REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL INCLUDE:

(a) THE NAME OF EACH PERSON DESCRIBED IN SUBSECTION (1) OF THIS SECTION THAT IS DOING BUSINESS IN THIS STATE, A MEMBER OF A COLORADO COMBINED GROUP, OR A MEMBER OF AN AFFILIATED GROUP AS DEFINED IN SECTION 1504 OF THE INTERNAL REVENUE CODE THAT INCLUDES A TAXPAYER DOING BUSINESS IN THIS STATE;

(b) THE SAME INFORMATION REQUIRED TO BE CONTAINED IN THE LIST DESCRIBED IN 26 CFR 301.6112-1; AND

(c) ANY ADDITIONAL INFORMATION REQUIRED BY THE DEPARTMENT BY RULES PROMULGATED IN ACCORDANCE WITH SECTION 39-21-112 (1).

(3) THE LIST REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL BE MAINTAINED IN THE SAME FORM AND MANNER AS THE LIST DESCRIBED IN 26 CFR 301.6112-1.

(4) A MATERIAL ADVISOR REQUIRED TO MAINTAIN A LIST UNDER SUBSECTION (1) OF THIS SECTION SHALL:

(a) MAKE THE LIST AVAILABLE TO THE DEPARTMENT UPON WRITTEN REQUEST BY THE DEPARTMENT; AND

(b) RETAIN THE INFORMATION THAT IS REQUIRED TO BE INCLUDED ON THE LIST FOR SEVEN YEARS FROM THE DATE THAT THE INFORMATION IS INCLUDED.

(5) THE DEPARTMENT SHALL PROMULGATE RULES IN ACCORDANCE WITH SECTION 39-21-112 (1) ESTABLISHING PROCEDURES TO IMPLEMENT THIS SECTION.

39-22-658. Material advisor penalties. (1) THE PENALTY FOR THE FAILURE OF A MATERIAL ADVISOR TO DISCLOSE A REPORTABLE OR LISTED TRANSACTION AS REQUIRED BY SECTION 39-22-656 (1) (a) SHALL BE UP TO TWENTY THOUSAND DOLLARS.

(2) IF A MATERIAL ADVISOR THAT IS REQUIRED TO DISCLOSE A REPORTABLE OR LISTED TRANSACTION IN ACCORDANCE WITH SECTION 39-22-656 (1) (a) PROVIDES FALSE OR INCOMPLETE INFORMATION TO THE DEPARTMENT, THEN AN ADDITIONAL PENALTY SHALL BE IMPOSED OF UP TO TWENTY THOUSAND DOLLARS.

(3) IF A MATERIAL ADVISOR THAT IS REQUIRED TO MAINTAIN A LIST UNDER SECTION 39-22-657 (1) FAILS TO MAKE THAT LIST AVAILABLE TO THE DEPARTMENT WITHIN A TWENTY-DAY PERIOD AFTER THE DAY ON WHICH THE DEPARTMENT MAILS A WRITTEN REQUEST FOR THAT LIST, THE MATERIAL ADVISOR SHALL BE SUBJECT TO A PENALTY OF TEN THOUSAND DOLLARS FOR EACH DAY THAT THE MATERIAL ADVISOR FAILS TO MAKE THAT LIST AVAILABLE TO THE DEPARTMENT AFTER THE EXPIRATION OF THE TWENTY-DAY PERIOD.

(4) A PENALTY IMPOSED BY THIS SECTION SHALL BE IN ADDITION TO ANY OTHER PENALTY IMPOSED BY ARTICLES 21 AND 22 OF THIS TITLE.

39-22-659. Waiver, reduction, or compromise of penalty for reasonable cause. UPON MAKING A RECORD OF ITS ACTIONS, AND UPON REASONABLE CAUSE SHOWN, THE DEPARTMENT MAY WAIVE, REDUCE, OR COMPROMISE A PENALTY IMPOSED BY THIS SUBPART 2.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 2, 2009