

**First Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**REVISED**

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 09-0609.01 Esther van Mourik

**HOUSE BILL 09-1093**

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**HOUSE SPONSORSHIP**

**Levy, McGihon, Benefield, Judd, Miklosi, Ferrandino, Fischer, Gagliardi, Green, Merrifield, Pommer, Solano**

**SENATE SPONSORSHIP**

**Veiga, Carroll M.**

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**House Committees**  
Finance

**Senate Committees**  
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**A BILL FOR AN ACT**

101 **CONCERNING ADDITIONAL INCOME TAX REPORTING REQUIREMENTS**  
102 **FOR A CORPORATE TAXPAYER.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Adopts the multistate tax commission's definitions of real estate investment trust and captive real estate investment trust. Requires the disclosure of reportable transactions, and establishes penalties for failure to disclose reportable transactions.

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

SENATE  
Am ended 2nd Reading  
March 6, 2009

HOUSE  
3rd Reading Unam ended  
February 5, 2009

HOUSE  
Am ended 2nd Reading  
February 3, 2009

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

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

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

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

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

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

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

25           **39-22-501. Taxation of regulated investment companies.**

26           (1) (a) FOR PURPOSES OF THIS ARTICLE, A "REGULATED INVESTMENT  
27 COMPANY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 851

1 OF THE INTERNAL REVENUE CODE.

2 (b) ~~In the case of a corporation which qualifies as a "regulated~~  
3 ~~investment company" under the provisions of the internal revenue code,~~  
4 For purposes of this article, the "net income" of ~~such corporation~~ A  
5 REGULATED INVESTMENT COMPANY in each year in which ~~such~~ THE  
6 corporation is taxed as a regulated investment company for federal  
7 income tax purposes shall be the "investment company taxable income"  
8 of such corporation, adjusted as provided in section 39-22-304 (2) and  
9 (3).

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

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

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

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

27 **SECTION 3.** 39-22-503, Colorado Revised Statutes, is amended

1 to read:

2 **39-22-503. Taxation of real estate investment trusts -**

3 **definitions.** (1) (a) ~~In the case of an organization which qualifies as FOR~~  
4 ~~PURPOSES OF THIS ARTICLE, a "real estate investment trust" under the~~  
5 ~~provisions~~ SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 856  
6 of the internal revenue code.

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

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

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

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

25 (b) A "CAPTIVE REAL ESTATE INVESTMENT TRUST" SHALL NOT  
26 INCLUDE A REAL ESTATE INVESTMENT TRUST THAT IS INTENDED TO BE  
27 REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET AND THAT

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

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

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

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

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

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

23 (III) ANY LISTED AUSTRALIAN PROPERTY TRUST; OR

24 (IV) ANY QUALIFIED FOREIGN ENTITY.

25 (b) "AUSTRALIAN PROPERTY TRUST" MEANS AN AUSTRALIAN UNIT  
26 TRUST REGISTERED AS A MANAGED INVESTMENT SCHEME UNDER THE  
27 AUSTRALIAN CORPORATIONS ACT IN WHICH THE PRINCIPAL CLASS OF UNITS

1 IS LISTED ON A RECOGNIZED STOCK EXCHANGE IN AUSTRALIA AND IS  
2 REGULARLY TRADED ON AN ESTABLISHED SECURITIES MARKET OR AN  
3 ENTITY ORGANIZED AS A TRUST, PROVIDED THAT A LISTED AUSTRALIAN  
4 PROPERTY TRUST OWNS OR CONTROLS, DIRECTLY OR INDIRECTLY,  
5 SEVENTY-FIVE PERCENT OR MORE OF THE VOTING POWER OR VALUE OF THE  
6 BENEFICIAL INTERESTS OR SHARES OF SUCH TRUST.

7 (c) "QUALIFIED FOREIGN ENTITY" MEANS A CORPORATION, TRUST,  
8 ASSOCIATION, OR PARTNERSHIP THAT IS ORGANIZED OUTSIDE THE LAWS OF  
9 THE UNITED STATES AND THAT SATISFIES THE FOLLOWING CRITERIA:

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

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

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

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

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

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

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

7 **SUBPART 2**  
8 **REPORTABLE TRANSACTIONS**

9 **39-22-651. Short title - citation.** THIS SUBPART 2 SHALL BE  
10 COMPRISED OF SECTIONS 39-22-651 TO 39-22-659 AND MAY BE CITED AS  
11 SUBPART 2. THIS SUBPART 2 SHALL BE KNOWN AND MAY BE CITED AS THE  
12 "COLORADO REPORTABLE TRANSACTIONS ACT".

13 **39-22-652. Definitions.** FOR PURPOSES OF THIS SUBPART 2,  
14 UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

22 (5) "LISTED TRANSACTION" MEANS A [REDACTED] TRANSACTION THAT IS:

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

1 (b) A TRANSACTION BETWEEN A CAPTIVE REAL ESTATE  
2 INVESTMENT TRUST AS DEFINED IN SECTION 39-22-503 (2) AND ITS MORE  
3 THAN FIFTY PERCENT BENEFICIAL OWNER AS DESCRIBED IN SECTION  
4 39-22-503 (2) (a); OR

5 [REDACTED]  
6 (c) A TRANSACTION BETWEEN A CAPTIVE REGULATED INVESTMENT  
7 COMPANY AS DEFINED IN SECTION 39-22-501 (2) AND ITS MORE THAN  
8 FIFTY PERCENT BENEFICIAL OWNER AS DESCRIBED IN SECTION 39-22-501  
9 (2) (a).

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

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

17 **39-22-653. Taxpayer disclosure of reportable or listed**  
18 **transactions.** (1) A TAXPAYER SHALL BE SUBJECT TO THE PROVISIONS OF  
19 THIS SECTION FOR EACH TAXABLE YEAR IN WHICH THE TAXPAYER  
20 PARTICIPATES IN A REPORTABLE OR LISTED TRANSACTION.

21 (2) A TAXPAYER SUBJECT TO THE PROVISIONS OF THIS SECTION  
22 SHALL DISCLOSE ANY REPORTABLE OR LISTED TRANSACTION TO THE  
23 DEPARTMENT IN A DISCLOSURE STATEMENT AS SPECIFIED IN SUBSECTION  
24 (5) OF THIS SECTION; EXCEPT THAT, IN THE CASE OF MULTIPLE  
25 TRANSACTIONS DESCRIBED IN SECTION 39-22-652 (5) (b) OR (5) (c) THAT  
26 OCCUR WITHIN A SINGLE TAX YEAR, IN LIEU OF A DISCLOSURE FOR EACH  
27 TRANSACTION WITH A REGULATED INVESTMENT COMPANY OR A REAL



1 ESTATE INVESTMENT TRUST, A TAXPAYER MAY FILE A DISCLOSURE FOR  
2 MULTIPLE TRANSACTIONS WITH A REGULATED INVESTMENT COMPANY OR  
3 REAL ESTATE INVESTMENT TRUST SHOWING THE NAME AND OWNERSHIP OF  
4 EACH SUCH ENTITY AND EACH SUCH ENTITY'S TOTAL ASSETS AND TOTAL  
5 INCOME EARNED PRIOR TO ANY DIVIDEND PAID DEDUCTION.

6

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

14 (4) (a) ANY STATEMENT THAT IS REQUIRED TO BE FILED OR  
15 DISCLOSURE REQUIRED TO BE MADE BY THIS SECTION WITH RESPECT TO  
16 ANY TAX YEAR FOR WHICH THE RETURN HAS ALREADY BEEN FILED BY A  
17 DATE SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION AND THAT  
18 IS FILED OR MADE PRIOR TO OR TOGETHER WITH THE TAXPAYER'S NEXT  
19 FILED RETURN SHALL BE CONSIDERED TIMELY FILED OR MADE.

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

26 (c) THE STATUTE OF LIMITATIONS WITH RESPECT TO ANY RETURN  
27 FOR WHICH A STATEMENT IS REQUIRED TO BE FILED OR DISCLOSURE

1 REQUIRED TO BE MADE BY THIS SECTION SHALL BE TOLLED FROM THE  
2 EFFECTIVE DATE OF THIS SECTION UNTIL SUCH STATEMENT OR DISCLOSURE  
3 IS FILED OR MADE, BUT IN NO EVENT SHALL THE STATUTE OF LIMITATIONS  
4 BE TOLLED FOR MORE THAN TWENTY-FOUR MONTHS.

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

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

15 **39-22-654. Additional listed transactions - report.** (1) THE  
16 DEPARTMENT SHALL SUBMIT A REPORT TO THE FINANCE COMMITTEES OF  
17 THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR  
18 COMMITTEES, BY JANUARY 31, 2010, AND ON OR BEFORE EVERY JANUARY  
19 31 THEREAFTER, ITS RECOMMENDATION FOR THE INCLUSION OF ANY  
20 ADDITIONAL LISTED TRANSACTIONS FOR PURPOSES OF THIS SUBPART 2.

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

24 **39-22-655. Penalty for failure to disclose a reportable or listed**  
25 **transaction.** (1) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS  
26 SUBSECTION (1), A TAXPAYER THAT FAILS TO DISCLOSE A REPORTABLE  
27 TRANSACTION AS REQUIRED BY SECTION 39-22-653 SHALL BE SUBJECT TO

1 A PENALTY OF UP TO FIFTEEN THOUSAND DOLLARS.

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

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

8 (3) FOR PURPOSES OF THIS SECTION, IF TWO OR MORE MEMBERS OF  
9 THE SAME COMBINED REPORT OR CONSOLIDATED RETURN PARTICIPATE IN  
10 THE SAME REPORTABLE OR LISTED TRANSACTION, THE PENALTY IMPOSED  
11 BY SUBSECTION (1) OF THIS SECTION SHALL ONLY BE IMPOSED ONCE ON  
12 THE COMBINED REPORT OR CONSOLIDATED RETURN.

13 **39-22-656. Material advisor - disclosure of reportable or listed**  
14 **transactions.** (1) (a) A MATERIAL ADVISOR SHALL DISCLOSE ANY  
15 REPORTABLE OR LISTED TRANSACTION TO THE DEPARTMENT ON A FORM  
16 PROVIDED BY THE DEPARTMENT WITHIN SIX MONTHS OF EACH  
17 TRANSACTION.

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

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

1 THE DEPARTMENT WITH A COPY OF THE INCOME TAX RETURN.

2 **39-22-657. Material advisor - maintenance of list.** (1) FOR  
3 EACH REPORTABLE OR LISTED TRANSACTION, A MATERIAL ADVISOR SHALL  
4 MAINTAIN A LIST OF THE PERSONS TO WHICH THE MATERIAL ADVISOR  
5 PROVIDES MATERIAL AID, ASSISTANCE, OR ADVICE WITH RESPECT TO  
6 ORGANIZING, MANAGING, PROMOTING, SELLING, IMPLEMENTING,  
7 INSURING, OR CARRYING OUT A REPORTABLE OR LISTED TRANSACTION.

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

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

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

17 (c) ANY ADDITIONAL INFORMATION REQUIRED BY THE  
18 DEPARTMENT BY RULES PROMULGATED IN ACCORDANCE WITH SECTION  
19 39-21-112 (1).

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

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

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

27 (b) RETAIN THE INFORMATION THAT IS REQUIRED TO BE INCLUDED

1 ON THE LIST FOR SEVEN YEARS FROM THE DATE THAT THE INFORMATION  
2 IS INCLUDED.

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

6 **39-22-658. Material advisor penalties.** (1) THE PENALTY FOR  
7 THE FAILURE OF A MATERIAL ADVISOR TO DISCLOSE A REPORTABLE OR  
8 LISTED TRANSACTION AS REQUIRED BY SECTION 39-22-656 (1) (a) SHALL  
9 BE UP TO TWENTY THOUSAND DOLLARS.

10 (2) IF A MATERIAL ADVISOR THAT IS REQUIRED TO DISCLOSE A  
11 REPORTABLE OR LISTED TRANSACTION IN ACCORDANCE WITH SECTION  
12 39-22-656 (1) (a) PROVIDES FALSE OR INCOMPLETE INFORMATION TO THE  
13 DEPARTMENT, THEN AN ADDITIONAL PENALTY SHALL BE IMPOSED OF UP TO  
14 TWENTY THOUSAND DOLLARS.

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

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

25 **39-22-659. Waiver, reduction, or compromise of penalty for**  
26 **reasonable cause.** UPON MAKING A RECORD OF ITS ACTIONS, AND UPON  
27 REASONABLE CAUSE SHOWN, THE DEPARTMENT MAY WAIVE, REDUCE, OR

1 COMPROMISE A PENALTY IMPOSED BY THIS SUBPART 2.

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