

STATEMENT OF AUDIT PROCEDURE

VOLUNTARY DISCLOSURE AND COMPLIANCE PROGRAM

I. BACKGROUND

The New York City Department of Finance ("Finance") encourages all taxpayers to file City tax returns and to pay taxes owed on time. Pursuant to administrative code section 11-131, Finance now allows taxpayers who are delinquent to come forward voluntarily to comply with New York City tax laws. For City taxes administered by New York State (NYS), taxpayers must contact the NYS Department of Taxation & Finance (at www.tax.ny.gov) to participate in the Voluntary Disclosure program. Finance believes that encouraging delinquent taxpayers to come forward will increase tax compliance.

We have established general procedures for auditors to follow to help taxpayers comply. Some taxpayers may qualify for a limited look-back period of six years (for trust fund taxes or intentional tax evasion) or three years (for most other circumstances). Some otherwise eligible taxpayers may not be offered a voluntary disclosure agreement when doing so will impede rather than further the goal of overall compliance. For example, a taxpayer that is late with the filing of a single return may not utilize the program to avoid the imposition of a single late filing penalty.

II. SCOPE

This Statement of Audit procedure ("SAP") provides general guidance to Finance staff on how to handle requests to participate in the Voluntary Disclosure and Compliance Program (VDCP) so that all requests are given consistent treatment. Specifically, the SAP:

- describes a voluntary disclosure;
- explains who is eligible to make a voluntary disclosure;
- explains how the initial contact is usually made; and
- provides the steps necessary for the voluntary disclosure process;

A taxpayer that merely wishes to file returns for all delinquent years and fully pay any resulting liability may do so at any time. These voluntary filings of delinquent returns are not covered in this SAP.

III. PROCEDURE

A. What is Voluntary Disclosure?

Typically, a voluntary disclosure is made when a taxpayer has not filed one or more taxes and now wants to comply. The taxpayer may also seek abatement of penalties and/or a limit on the number of years it must file. The taxpayer or its representative may make the first contact with Finance. Also, the taxpayer may choose to remain anonymous until a written agreement is complete. The written agreement specifies the steps and payments necessary to satisfy any existing delinquent liability. No refund shall be granted or tax credit allowed, including applicable interest, for amounts paid under this program.

B. Eligibility

A taxpayer may make a voluntary disclosure for one or more tax periods and/or tax types provided:

- the taxpayer is not currently under audit by Finance
- the taxpayer was not previously contacted by Finance regarding the liability
- the taxpayer is not a party to any criminal investigation being conducted by NYS or any political subdivision of NYS
- the liability is not related to a tax avoidance transaction that is a Federal or NYS reportable transaction

A taxpayer is eligible even if the reason for the delinquency is intentional disregard of the tax obligation or fraud.

Even though the taxpayer may want a limit on the number of years to file, the entire delinquent liability must be disclosed. This disclosure protects the taxpayer from audit and assessment for earlier years. If the delinquency is the result of mistake, confusion, ignorance of the law, inability to comply, or a similar reason, applicants may qualify for a three-year "look-back". If the tax involved is a trust fund tax, the taxpayer may qualify for a six-year "look-back".

The taxpayer must also document the reason for not filing. That reason is subject to review as part of the audit process. Any voluntary disclosure and compliance agreement made between Finance and a taxpayer will become null and void if a taxpayer makes misrepresentations or omits facts in the voluntary disclosure request.

C. Initial Contact

A taxpayer may come forward directly or anonymously through a representative. The initial contact, whether by phone or in writing, should be made to the Voluntary Disclosure Coordinator.

D. Voluntary Disclosure Process – From Request through Conclusion

Taxpayers participating in the voluntary disclosure and compliance program generally want an advance written commitment from Finance to waive penalties and/or limit the number of years they must comply. We require the taxpayer to make the request for a voluntary disclosure and compliance agreement in writing and provide certain supporting information.

Finance will ask the taxpayer or the taxpayer's representative to include the following in the written request:

- 1) A statement of facts, anonymously if necessary, describing the taxpayer's activities in New York City and New York State, when these activities started, the number of employees, and their titles, involved in the activities. The statement should indicate the tax year they believe their tax obligation first began. (Note: There is no limit in the law as to how many past years Finance may examine for a non-filing entity under the voluntary disclosure and compliance program. The period is determined by the facts and circumstances. However, some taxpayers may qualify for a limited "look-back" period.)
- 2) A statement explaining why the taxpayer has failed to file tax returns and pay taxes in the past.
- 3) A computation of the taxpayer's approximate tax liability on a year-by-year basis for all the delinquent years.
- 4) An affirmation, prepared by either the taxpayer or its representative, that the taxpayer has not been previously contacted by Finance concerning any potential tax liability for the tax now being disclosed. The taxpayer must not be currently under audit for any City tax and the taxpayer understands that all disclosed facts are subject to audit. If it is determined a material fact has been omitted or misrepresented, the agreement becomes null and void.
- 5) For taxpayers requesting a limited "look-back" period, a statement that explains why the limited "look-back" is appropriate. Generally, a taxpayer will qualify for the three-year "look-back" if delinquency was caused by mistake, confusion, ignorance of the law, or some inability to comply. Most other taxpayers may qualify for a six-year "look-back". Taxpayers will not qualify for the limited "look-back" if any of the following apply:
 - a) the taxpayer was a NYC filer in the past and had stopped filing NYC returns;
 - b) the taxpayer has no current obligation to file NYC tax returns; or
 - c) the delinquent obligation occurred as a result of changes made by the Internal Revenue Service or by New York State.

Taxpayers that do not qualify for the limited "look-back" period may still receive an agreement covering a longer period.

- 6) Other information or data deemed appropriate.

Once the process is complete and Finance determines conditions for a voluntary disclosure and compliance agreement are satisfied, our representative and the taxpayer can discuss terms for a written voluntary disclosure and compliance agreement. The agreement must include the following elements or terms:

- a) A summary of the facts and representations.
- b) Disposition of penalties.
- c) The period or periods for which returns must be filed and the period or periods that Finance will not audit the taxpayer or assess amounts due.
- d) A statement that all returns and representations are subject to audit. Any material omission or misrepresentation may result in rescinding the agreement.
- e) The agreed delinquent taxes must be paid within a specified time period.
- f) A commitment to file all tax returns and make estimated payments due, after the date of the agreement, on a timely basis.

All voluntary disclosure and compliance agreements must be reviewed and approved by the Coordinator. An authorized employee must sign the agreement for Finance.

IV. UNIFIED PROGRAM

Taxpayers that are delinquent for both NYS and NYC taxes may participate in the Unified Program. This program allows a taxpayer to make one request to participate in both the NYS and NYC VDCPs without making separate requests to each jurisdiction. As part of this program, NYC will conform to NYS procedures, including those requiring taxpayers to identify themselves on their application. The taxpayer receives one agreement detailing the terms of both jurisdictions. An authorized employee from each jurisdiction will sign the agreement.

All requests to participate in the Unified Program must be made with NYS.