



# SALT LEA NTRC – SEPTEMBER 2024 VOLUNTARY DISCLOSURES

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# WHAT IS A VOLUNTARY DISCLOSURE (“VDA”)?

- ▶ A voluntary disclosure program is an avenue for taxpayers to voluntarily disclose unpaid tax liabilities to a state and to come into compliance in a non-adversarial way.



# POLLING QUESTION

Have you ever worked on a VDA?

- a. Yes
- b. No



# BENEFITS OF A VOLUNTARY DISCLOSURE

## Advantages:

- ▶ Waiver of penalties
- ▶ Some states will reduce or eliminate interest, as well
- ▶ Limitation of the periods in statutes of limitations
  - ▶ Typically a 3 or 4 year period
  - ▶ All prior periods are forgiven
- ▶ Time to determine liability and provide calculations to the taxing authority
- ▶ No criminal prosecution
- ▶ Confidentiality
- ▶ Not least of all, PEACE OF MIND
- ▶ Nearly all states allow application to be anonymous



# QUALIFICATIONS FOR A VDA

## General Qualifications:

- ▶ Taxpayer not under audit
- ▶ State has not previously contacted Taxpayer
- ▶ Taxpayer not previously registered for tax in question
- ▶ Tax due for open periods must be paid, along with interest
- ▶ Tax for prior periods cannot have been collected
  - ▶ Some states do not disqualify if tax collected, but must be paid in VDA
- ▶ Records must be available for audit
- ▶ Must remain in compliance going forward

**NOTE:** Each state's qualifications can be different. Some will require a managed audit.



# OVERVIEW OF VDA PROCESS

## **Step 1:** Application

- ▶ Found on state website

## **Step 2:** Executed Agreement

- ▶ State's response to application
- ▶ Terms and conditions
- ▶ Signature kicks off deadline

## **Step 3:** Providing Requested Information

- ▶ Spreadsheet
- ▶ Registration
- ▶ Payment



# VDA APPLICATION

## Application Types

- ▶ Form (Online or Mailed-In)
- ▶ Written Letter Request

## General Information Required

- ▶ Description of taxpayer's business and activities in state
- ▶ Length of time activities have occurred in the state
- ▶ Details of property, inventory, or employees in the state (if any)
- ▶ Explanation of why returns were never filed and taxes not paid
- ▶ Indication of whether sales tax was previously collected but not remitted
- ▶ Estimate of tax liability



# EXECUTED AGREEMENT

State provides Executed Agreement

- ▶ Discloses terms and conditions
  - ▶ State's terms to abide by
  - ▶ Company's terms to abide by
- ▶ Request of needed information
  - ▶ Sales for lookback period
  - ▶ Payment
  - ▶ Registration



# VDA APPLICATION FORM EXAMPLE



Form  
**VDA-1**  
State Form 56462  
(1-18)

Indiana Department of Revenue  
**Voluntary Disclosure Request**

Voluntary Disclosure Office  
Indiana Department of Revenue  
100 N. Senate Ave., IGCN Room N241  
Indianapolis, Indiana 46204

Phone: (317) 233-6036 | FAX: (317) 234-5531 | Website: [www.in.gov/dor](http://www.in.gov/dor)

<b>1. Customer Identification</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No Are you representing a taxpayer requesting Voluntary Disclosure?			
Customer or Representative Name		Taxpayer FEIN or SSN	
Contact Name		Contact Title	
Mailing Address		Telephone	FAX
City	State	ZIP Code	Email Address
<b>2. Type of Entity/Ownership</b>			
<input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> LLC-Taxed as a Partnership <input type="checkbox"/> LLC-Taxed as a Corporation <input type="checkbox"/> C-Corp			
<input type="checkbox"/> S-Corp <input type="checkbox"/> Other (describe):			
<b>3. Is customer registered with the Indiana Secretary of State?</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, year:			
<b>4. Has the customer been contacted by the Indiana Department of Revenue regarding this liability?</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>5. Does customer's income tax end on December 31?</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No If no, enter the fiscal year end date:			
<b>6. Has customer filed any recent short period income tax returns?</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, specify period ends:			
<b>7. Voluntary Disclosure by Tax Type</b>			
Returns <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please list below.			
<b>Sales and Use Tax</b>			
<input type="checkbox"/> Yes		Date activity began in Indiana:	
<input type="checkbox"/> No, explain		<input type="checkbox"/> Already filing <input type="checkbox"/> Exempt <input type="checkbox"/> Other, explain:	
<b>Franchise/Income Tax</b>			
<input type="checkbox"/> Yes		Date activity began in Indiana:	
<input type="checkbox"/> No, explain		<input type="checkbox"/> Already filing <input type="checkbox"/> Protected by PL86-272 <input type="checkbox"/> Other, explain:	
<b>Withholding Tax</b>			
<input type="checkbox"/> Yes		Date activity began in Indiana:	
<input type="checkbox"/> No, explain		<input type="checkbox"/> Already filing <input type="checkbox"/> Exempt <input type="checkbox"/> Other, explain:	

<b>Other Tax Type</b>	
<input type="checkbox"/> Yes	Date activity began in Indiana:
<input type="checkbox"/> No	
<b>8. Describe customer's activity in Indiana.</b>	
Years:	
<b>9. List property (real, personal, tangible or intangible) owned or rented in Indiana.</b>	
Years:	
<b>10. Additional Information</b>	
1. What is the approximate liability (by tax type) for each of the years? If unknown, please state.	
2. Has any Indiana tax been collected or withheld?	
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the initial date of collection?	
3. Has sales tax been paid to a vendor in error for which a credit is being claimed?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

If extra space is needed anywhere on this form, please attach additional pages.

Preparer's Signature: \_\_\_\_\_  
(not required if emailed)

Date: \_\_\_\_\_  
(mm-dd-yyyy)



# DELIVERABLES TO STATE

- ▶ Sales for lookback period
  - ▶ Differs per state
    - ▶ Spreadsheet or Schedule
- ▶ Payment
  - ▶ Timing will differ per state
    - ▶ Submitted with spreadsheet or once state calculates liability
- ▶ Registration



# SALES TAX SCHEDULE EXAMPLE

A	B	C	D	E	F	G	H	I
	Name							
	File Number							
	Address							
	City, St Zip							
	Month	Year	City	County	Exempt Sales	Taxable Sales	Gross Sales	Exemption Description



# TIPS AND CONSIDERATIONS

Verify with customers

- ▶ Accrued tax
- ▶ Exemptions

VDA Specialist

- ▶ Audit Department

MTC Multistate Voluntary Disclosures

- ▶ Online application
- ▶ Participating states



# SOME STATES LIMIT VDA PROGRAM

- ▶ Delaware (limit to certain yrs)
- ▶ South Dakota (sales/use)
- ▶ Washington (sales/use, B&O)
- ▶ Wyoming (unclaimed property)



# VDA LOOK BACK PERIODS – INCOME TAX

States with 3 year look back:

- ▶ AL, AR, CT, DC, FL, GA, HI (3+), ID, IN (3+), KS, LA (3+), ME, MA, MS, NE, NH, NC, ND, OH, OK, OR, PA (3+), RI, SC, TN (3+), UT, VT, VA, WV

States with 4 year look back:

- ▶ AZ, CO, IL, KY, MD, MI, MN, MO, NJ, TX, WI

States with 5 year or more look back:

- ▶ AK, CA, DE, IA, MT, NV, NM, NY



# VDA LOOK BACK PERIODS – SALES TAX

States with 36 month look back:

- ▶ AL, AR, CO, CT, DC, FL, GA, HI, ID, IN (36+), KS, LA, ME, MA, MN, MS, NE, NC, ND, OH, OK, PA (36+), RI, SC, SD, TN, UT, VT, VA, WV

States with 48 month look back:

- ▶ AZ, IL, KY, MD, MI, MO, NJ, TX, WA, WI

States with 5 year or more look back:

- ▶ AK (local only), CA, IA, NV, NM, NY



# POLLING QUESTION

Typically, how long is the lookback period for a VDA?

- a. 6 months
- b. 1 year
- c. 3 years
- d. 5 years





# WHAT IS A TAX AMNESTY?

- ▶ A tax amnesty program is an avenue by which the government encourages non-filer/delinquent taxpayers to pay the taxes due for a reduction in penalties, interest, and sometimes tax for a short period of time (typically one year or less).
- ▶ Established by the Legislature;
- ▶ Can vary by tax types, conditions, benefits;
- ▶ Typically time-sensitive;
- ▶ If non-filer taxpayer fails to apply, penalties for not applying can be assessed, if tax is later found due.



# WHAT IS A TAX AMNESTY?

- ▶ Be certain to check if state is offering tax amnesty for any periods or taxes prior to applying for a VDA
  - ▶ Which is best for you?
  - ▶ Some states will apply penalties for not applying for amnesty if your VDA period is a period for which amnesty was provided.
  - ▶ Know the pitfalls



# BENEFITS OF AMNESTY

- ▶ Advantages:
  - ▶ Waiver/reduction of penalties
  - ▶ Some states will reduce or eliminate interest, as well
  - ▶ Limitation of the periods in statutes of limitations
  - ▶ No criminal prosecution/investigation
  - ▶ PEACE OF MIND

**Note:** Missing the Amnesty deadlines may lead to penalties, even in a voluntary disclosure



# AMNESTY

## ► General Qualifications:

- Typically must submit by certain date
- Past returns are typically required
- Waiver of rights to refund or credit for the tax due
- Waiver of certain other rights (typically protests, etc.)
- No payment plans on the tax due
- Taxpayer not under audit
- State has not previously contacted Taxpayer in particular timeframe
- If tax collected in any period, such period is included
- Records must be available for audit
- Must remain in compliance going forward
- Some states require continuous reporting for a time

**Note:** Each state's qualifications can be different.



# POLLING QUESTION

Do you prefer coffee or tea?

- a. Coffee
- b. Tea
- c. Neither



# AMNESTY - INELIGIBLE

- ▶ General Disqualifications:
  - ▶ Contacted by Department
  - ▶ Party to criminal investigation for nonpayment of tax
  - ▶ Fraudulent application, document, return, etc.
  - ▶ Have been issued final assessment and appeal has ended
  - ▶ Have entered into a VDA

**Note:** Each state can be different. Amnesty may not be available for certain taxes, even when amnesty is available for other taxes.



# CURRENT STATE AMNESTY

States with current amnesty:

- ▶ AL (prior to 2019)

Recent amnesty periods (in last 5 years):

- ▶ FL, IL, KY, NV, OH

Amnesty within last 10 years:

- ▶ AK (local only), AZ, DE, IN, KS, LA, MD, MA, MO, NH, NJ, NM, OK, PA, RI, TX, VT, VA, WA



# WHAT IS AN OFFER IN COMPROMISE?

- ▶ An offer in compromise (“OIC”) is an agreement between a taxpayer and the taxing authority pursuant to tax controversy that settles the company’s liabilities for less than the amount owed. It is typically used when a taxpayer cannot pay the full liability or financial hardship is created by doing so.
- ▶ Allows government opportunity to collect a portion of tax debt that realistically may never be paid in full.
  - ▶ Typically not allowed if Taxpayer can pay through an installment agreement.





# ELIGIBILITY FOR OFFERS IN COMPROMISE

- ▶ Tax liability is final (not in dispute)
- ▶ Insolvency/Debt is uncollectible
- ▶ Misunderstanding or misapplication of tax laws
- ▶ In controversy
- ▶ Did not knowingly non-comply



# NOT AVAILABLE IN ALL STATES

- ▶ A federal liability will, many times, lead to a state liability
- ▶ Not all states have an “offer in compromise” as an option.

The following do not have it as an option, though agreements can be made in some states:

- ▶ Alabama (Governor, Attorney General)
- ▶ Alaska
- ▶ Florida
- ▶ Idaho
- ▶ Montana
- ▶ New Mexico
- ▶ North Dakota
- ▶ South Carolina
- ▶ South Dakota
- ▶ Texas
- ▶ Vermont
- ▶ Wyoming



# POLLING QUESTION

What is your favorite season?

- a. Summer
- b. Fall
- c. Winter
- d. Spring
- e. Tax season



## EXAMPLE: CALIFORNIA

- ▶ FTB is authorized to enter into offer in compromise agreements with income taxpayers regarding final tax liabilities. *Cal. Rev. Tax Cd. §19443*).
  - ▶ Approvals vary depending on the value of compromise.
- ▶ CDTFA can agree to compromise if the taxpayer meets the following qualifications if they:
  - ▶ Have a final tax or fee liability on a closed account;
  - ▶ Are no longer associated with the business that incurred the liability or similar business;
  - ▶ Do not dispute the amount of tax owed; and
  - ▶ Cannot pay the full amount owed in a reasonable amount of time.

*Cal. Rev. Tax Cd. §19443*



## EXAMPLE: GEORGIA

- ▶ Taxpayers experiencing severe and continuing financial hardship can apply for an offer in compromise to settle past tax debt (*Ga. Code Ann. §48-2-18.1(a)*).
  - ▶ Must file proper forms;
  - ▶ Must make adequate compromise proposal based on ability to pay;
  - ▶ 60-90 day investigation required; and
  - ▶ If accepted, must pay in 90 days and remain in compliance with all tax filings for 5 years.

**Note:** State can reinstate if taxpayer fails to meet their obligations

*Ga. Code Ann. §48-2-18.1(a)*



## EXAMPLE: ILLINOIS

- ▶ Offer in compromise may be filed by taxpayer with Board of Appeals. The only grounds for relief is uncertainty as to collectability (Ill. Admin. Code 86 §210.115)
  - ▶ Must have a final tax liability;
  - ▶ Board may examine financial situation and likelihood of future earnings and collectibility;
  - ▶ Do not dispute the amount of tax owed; and
  - ▶ Cannot pay the full amount owed in a reasonable amount of time.

*Ill. Admin. Code 86 §210.115*



## EXAMPLE: LOUISIANA

- ▶ Secretary of Revenue can compromise judgments or assessments for taxes \$500K or less if any the following apply:
  - ▶ Serious doubt as to collectibility;
  - ▶ Serious doubt as to taxpayer's liability for the outstanding judgment;
  - ▶ Administration and collection costs will exceed the outstanding liability.

**Note:** Any OIC must be accompanied by payment of 20% of offer.

*La. Rev. Stat. Ann. § 47:1578(B)(4)(a)*




## EXAMPLE: MARYLAND

- ▶ OIC program is used to solve tax liabilities when taxpayer is unable to pay in full.
- ▶ Must meet following requirements:
  - ▶ Must have incurred delinquent tax liability resulting in assessment;
  - ▶ All other avenues of administrative appeal have been exhausted;
  - ▶ No appealable issue remaining;
  - ▶ All required returns have been filed;
  - ▶ Must not be involved in open bankruptcy proceeding;
  - ▶ Unlikely of full payment in foreseeable future; and
  - ▶ Must be without resources or unable to apply present or future resources to the liability.

*Maryland Tax Tips No. 58, 1/1/10*





## EXAMPLE: MICHIGAN

- ▶ State Treasurer can compromise any payment of tax subject to state Revenue Act, including penalties and interest, if one or more of the following exist:
  - ▶ Doubt exists as to liability and taxpayer would have prevailed in a contested case had their appeal rights not expired, per DOT;
  - ▶ Doubt exists as to collectability, if taxpayer establishes that:
    - ▶ Amount offered is most that can be expected to be paid or collected; and
    - ▶ No reasonable prospects of acquiring increased income or assets to pay liability in reasonable time.
- ▶ Federal compromise has been granted for same tax years.

**Note:** Tax must submit with application greater of \$100 or 20% of offer.

*Mich. Comp. Laws Ann. § 205.23a*



## EXAMPLE: OHIO

- ▶ OIC program allows the Attorney General, with consent of the DOT, to compromise a claim for less than tax owed due to:
  - ▶ Economic hardship;
  - ▶ Doubt as to collectability, or
  - ▶ Substantial liability that claim would be subject to a refund.
- ▶ Applicant must agree to:
  - ▶ Full financial disclosure;
  - ▶ Payment in full within 60 days, or
  - ▶ Continued compliance with all state reporting for five years.



## EXAMPLE: VIRGINIA

- ▶ Offers in compromise may be made for the following (Va. Code Ann. § 58.105(A); Va. Admin. Code 23 § 10-20-110(C)):
  - ▶ Doubtful liability;
  - ▶ Doubtful collectability, or
  - ▶ Waiver of penalties greater than \$2,000.

*Va. Code Ann. § 58.105(A); Va. Admin. Code 23 § 10-20-110(C)*



# CONTACTS



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QUESTIONS?