

VOLUNTARY DISCLOSURE – MULTISTATE PROGRAMS

Multistate voluntary disclosure programs provide an opportunity for businesses and individuals with unresolved state tax obligations to voluntarily submit past-due information and clear overdue tax debts. In return for coming forward voluntarily, taxpayers can receive valuable financial benefits and avoid risks of further liability. The attorneys within Hodgson Russ’s multistate voluntary disclosure practice strategically navigate the voluntary disclosure landscape in order to ensure that taxpayers efficiently resolve their outstanding tax liabilities.

Eligibility

To qualify for a Voluntary Disclosure Agreement (“VDA”), taxpayers generally cannot be under audit or have been contacted previously by the state’s tax department regarding the taxes they hope to disclose. Registered taxpayers may still be eligible for a VDA in certain states, while even ineligible taxpayers may qualify for other special accommodations. Anonymous applications provide opportunities to confirm eligibility.

Benefits

If taxpayers chose to voluntarily come forward, they have the opportunity to gain multiple benefits. Benefits can include:

- Civil-penalty waiver (including possible penalty waiver in cases of collected but unremitted sales and use tax)
- No criminal prosecution
- Limited lookback that can eliminate historic tax debts
- Full compliance
- Clean credit history

Eligible Tax Types

The eligible tax types covered by most states’ voluntary disclosure programs include:

- Personal Income Tax

Contact

K. Craig Reilly
716.848.1582
kcreilly@hodgsonruss.com

Professionals

Attorneys

Open Weaver Banks
Brandon Bourg
Mario Caito
Paul Comeau
Ariele Doolittle
Christopher Doyle
Joseph Endres
Debra Herman
Daniel Kelly
Mark Klein
Joshua Lawrence
Timothy Noonan
Elizabeth Pascal
K. Craig Reilly
Emma Savino
Joseph Tantillo
Andrew Wright

Audit Managers

Rhonda Brinkman

Senior Audit Manager

Michael Van Wagnen

VOLUNTARY DISCLOSURE - MULTISTATE PROGRAMS

- Withholding Tax
- Corporate Franchise/Income Tax
- Sales and Use Tax (including collected but unremitted tax in certain states)
- Local Taxes

Multistate Tax Commission

The Multistate Voluntary Disclosure Program (“MVDP”) allows taxpayers with potential tax liability in multiple states to negotiate a settlement, using a uniform procedure coordinated through the National Nexus Program of the Multistate Tax Commission (“MTC”).

Advantages to the MTC’s program include a streamlined application and registration process. The program, however, excludes several states, and there is often a lack of direct contact with the state-specific voluntary disclosure representatives. The attorneys within Hodgson Russ’s multistate voluntary disclosure practice assist taxpayers in analyzing and selecting the best forum for resolving their state tax debts, and Hodgson Russ has extensive experience operating as an intermediary in both the direct-to-state process and the indirect MTC process.

Practical Considerations

Hodgson Russ works with taxpayers who are considering a Voluntary Disclosure Program to analyze their business operations and infrastructure in order to determine:

- Where does the taxpayer have physical presence nexus?
- Where has the taxpayer established economic nexus?
- What are the taxpayer’s revenue sources?
- In which states are the taxpayer’s sales subject to sales and use tax?
- Is there exposure for related tax types?

Hodgson Russ then assists taxpayers in coordinating their applications and managing the disclosure process, including:

- Quantifying exposures
- Timing applications
- Organizing, monitoring, and prioritizing deadlines
- Reviewing final agreement terms

Hodgson Russ has specific experience in assisting taxpayers in multistate voluntary disclosure processes related to both pre-acquisition due diligence reviews and post-closing escrow and indemnity agreements.

VOLUNTARY DISCLOSURE - MULTISTATE PROGRAMS

Experience

- Successfully assisted online retailer with 39 state voluntary disclosure, including disclosure and remittance of previously collected sales and use taxes.
- Prepared compliance strategy for \$6.9 million multistate voluntary disclosure on behalf of several related entities, including entities previously registered as sales and use tax vendors.
- Managed target company's multistate voluntary disclosure process in accordance with terms and conditions of purchase agreement, providing regular updates to both target company and purchaser.
- Prepared and submitted post-audit voluntary disclosures on behalf of both personal income and sales and use taxpayers in order to limit post-audit exposure.
- Completed multistate voluntary disclosure on behalf of S corporation shareholders in order to properly report flow-through personal income related to a re-computation of the S corporation's business allocation percentage.

***Hodgson Russ LLP's services are limited to legal services. The firm does not undertake any responsibility to perform services that are ordinarily performed by an accountant, such as preparing or filing original or amended tax returns.*

Presentations & Events

- CCH Self-Study
- The New York State Voluntary Disclosure and Compliance Program: 2023 Update
- Help Clients Navigate Multistate Voluntary Disclosures in Today's Economic Nexus World

Publications

Charting the Course for Multistate Voluntary Disclosures
Tax Notes State, September 18, 2023