

Voluntary Disclosure and Compliance Program

General

To encourage taxpayers to voluntarily correct overdue tax liabilities and comply with the Tax Law in the future, Chapter 57 of the Laws of 2008 added section 1700 of Article 36 to the Tax Law which establishes the Voluntary Disclosure and Compliance (VDC) program. This program is designed to encourage eligible taxpayers who owe back taxes, regardless of the reason, to voluntarily disclose tax liabilities that are not currently known to the Tax Department. The significant incentives provided by the VDC program to eligible taxpayers who participate in the program and comply with its requirements include protection from possible criminal tax prosecution and the avoidance of civil penalties.

Taxpayers who participate in the VDC program will be required to sign a compliance agreement in which they will promise to correct their past behavior, comply with the Tax Law in the future, and pay their past due tax obligations.

Eligible taxpayers can participate even if their tax liability is the result of fraudulent or criminal conduct.

Taxpayer disclosures made under the program are confidential. The law prohibits the Tax Department from using the taxpayer's disclosure (including all information or returns submitted by the taxpayer under the program) as evidence against the taxpayer or sharing them with another agency unless the taxpayer intentionally fails to comply with the compliance agreement made under the VDC program.

Definitions

The following definitions apply to the VDC program.

An *eligible taxpayer* is an individual or entity subject to an eligible tax who meets all of the following criteria:

- The taxpayer is not currently under audit by the Tax Department for any tax.
- The taxpayer is voluntarily disclosing a New York tax liability that the Tax Department has not determined, calculated, researched or identified at the time of the disclosure.
- The taxpayer is not currently a party to any criminal investigation being conducted by any agency or political subdivision of New York State.

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- The taxpayer is not seeking to disclose participation in a tax avoidance transaction that is a federal or New York State reportable or listed transaction. These transactions are commonly referred to as tax shelters.

The term *taxpayer* includes any person required to pay or collect any of the taxes covered by the program. A taxpayer can be an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person subject to tax, or any other law imposing administrative tax responsibilities on the Commissioner of Taxation and Finance (the commissioner).

Eligible tax is any tax type, currently or previously imposed, under the Tax Law or any other law administered by the commissioner.

Criminal tax prosecution is the prosecution for criminal conduct related to a tax liability with New York State.

Application process

To obtain relief under the VDC program, an eligible taxpayer must submit an application. The application requires the taxpayer to provide identifying information; complete a disclosure statement describing the nature of the tax liability and the tax periods covered by the application; and provide any other information that the commissioner may require.

Upon receipt of the application, the Tax Department will determine whether the taxpayer is eligible for the program. The department may, if necessary, seek additional information from the taxpayer to determine eligibility. No application will be denied solely because the taxpayer has admitted that the tax liability is the result of willful or fraudulent conduct.

To submit an online application go to the Tax Department Web site at www.nystax.gov.

If the taxpayer submits an application and a disclosure statement but then chooses not to use the VDC program, or if it is determined by the department that the taxpayer is not eligible for the program, the department cannot use the disclosure against the taxpayer in any proceeding or share the information with any other agency.

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Compliance agreement

Terms of compliance agreement. To participate in the VDC program, the taxpayer must enter into a *compliance agreement* with the Tax Department. The compliance agreement will be in a form established by the department and will include those terms the department may reasonably require to satisfy the taxpayer's disclosed tax obligations and to comply with the Tax Law in the future. Generally, the agreement will set a specific future period during which the taxpayer will be required to comply with the terms of the agreement.

The compliance agreement will provide that if the taxpayer complies with the terms of the agreement, the taxpayer will not be subject to any criminal tax prosecution in New York State for the conduct disclosed. In addition, it will provide that as long as the taxpayer complies with the terms of the compliance agreement, the department will not use the taxpayer's disclosure as evidence in any proceeding brought against the taxpayer or reveal the contents of the disclosure to any other agency.

As part of the compliance agreement, the Tax Department may agree to limit the scope of its review to a specific period of time (the "limited look-back clause"). An eligible taxpayer who owes more than three years of taxes may in certain circumstances only be required to pay the taxes owed for a limited look-back period. Taxpayers seeking a compliance agreement with a limited look-back clause must request it during the application process and must nonetheless make a full and complete statement describing their entire tax liability. The limited look-back clause will provide that the department will limit its review to the look-back period and will not look back prior to that period to audit or assess the taxpayer for anything related to the tax matter being disclosed. In addition, taxpayers will not be required to file returns for the years prior to the look-back period. The length of the look-back period will depend upon the circumstances of each case. Under this type of compliance agreement, the taxpayer will not be granted protection from criminal prosecution brought by other agencies or prosecutors for the periods prior to the look-back period. However, the department will agree not to refer the taxpayer for criminal prosecution and, as detailed in the "Confidentiality of Disclosures" section, the department is prohibited from disclosing this information to other agencies, including law enforcement agencies. For more information on a compliance agreement with a limited look-back clause, visit the Tax Department Web site at www.nystax.gov.

Once a compliance agreement is executed, the Tax Department will waive any applicable penalties for the following: (1) failure to pay the disclosed tax liability; (2) failure to file a return or report with respect to the disclosed tax liability; and (3) failure to pay estimated tax. In addition, the department will not assess any other civil penalties related to the tax liability disclosed.

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The taxpayer must pay any tax and interest for the period(s) included in the compliance agreement when it is executed or within the time stated on a bill issued to the taxpayer by the Tax Department. If the department is satisfied that the taxpayer cannot make immediate full payment of the disclosed tax liability, the department may enter into an installment payment agreement with the taxpayer. The taxpayer may be required to provide information concerning the taxpayer's financial condition and resources before entering into an installment payment agreement.

The compliance agreement **will not** preclude the Tax Department from auditing any returns filed to determine if the returns are accurate and were completed in accordance with pertinent law and regulations. The department retains the right to examine and audit the information and returns provided by the taxpayer as part of the VDC program process, and it may require the taxpayer to provide additional information concerning the disclosed tax liability.

Unless the Tax Department redetermines the amount of tax and interest due on its own motion, no refund or credit will be allowed for any tax and interest paid under this program.

Scope of compliance agreement. Taxpayers participating in the VDC program only receive protection from criminal tax prosecution and relief from penalties with respect to the specific tax liabilities that are the subject of their disclosure and compliance agreement. The taxpayer's disclosure will determine the scope of the protection from criminal prosecution and penalty waiver provided by the compliance agreement. The compliance agreement will include and cover only the specific tax liabilities disclosed and only for the periods specified by the taxpayer. Accordingly, the protection from criminal tax prosecution and the waiver of penalties under the compliance agreement will only be as extensive as the taxpayer's disclosure. Therefore, taxpayers who want to obtain the broadest possible protection from criminal sanctions and penalties should include all known tax liabilities and conduct related to those liabilities in their application to participate in the program.

Noncompliance

A taxpayer can cause the compliance agreement to be rescinded and, therefore, lose the benefits of the VDC program, in three ways:

- If the taxpayer intentionally provides false material information or omits material information in his or her application to participate in the program or in any submission to the Tax Department as part of the taxpayer's participation in the program, the compliance agreement will be deemed rescinded.
- If the taxpayer attempts to intentionally defeat or evade a tax subject to the agreement, the compliance agreement will be deemed rescinded.

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- If the taxpayer intentionally fails to comply with any of the terms of the compliance agreement, including by intentionally failing to pay all of the back taxes and interest owed or by failing to comply with all tax laws as set forth in the agreement, the compliance agreement will be deemed rescinded.

If a compliance agreement is deemed rescinded, the Tax Department will be free to use the taxpayer's disclosures against the taxpayer and to pursue any civil or criminal penalty that might apply to the misconduct disclosed by the taxpayer as part of the VDC program process.

Confidentiality of Disclosures

The VDC law and the Tax Department's policies are intended to encourage taxpayers to make full, honest, and complete disclosures without fear that those disclosures may later be used against them. Under the VDC law, taxpayer disclosures (including all information and returns submitted by the taxpayer under the program) are confidential. They cannot be used by the department against the taxpayer or shared with any other agency except where the taxpayer intentionally violates a compliance agreement under the VDC program.

Absent such a violation by the taxpayer, the department will not use the disclosures against the taxpayer or share them with department personnel outside the VDC program. The department may, however, audit and examine the returns filed by the taxpayer as part of the VDC program.

If a taxpayer applies but does not enter the VDC program, the information provided by the taxpayer cannot be used by the department for any purpose and will not be shared with any other agency.

Because the VDC law and the Tax Department's policies provide taxpayers with strong guarantees that their communications and disclosures will only be used in the VDC program and not for any other purpose (unless the taxpayer intentionally violates the compliance agreement), the department will not accept anonymous applications for participation into the VDC program.

Voluntary disclosures outside the VDC program

The Tax Department has the power to specifically grant protection from criminal tax prosecution only to eligible taxpayers who participate in the VDC program. However, taxpayers who do not or are not eligible to participate in the VDC program are encouraged to voluntarily disclose and resolve past liabilities that are unknown to the department. Even if the VDC program is not available or utilized, a taxpayer who voluntarily self-discloses prior liabilities and who cooperates with the department will be viewed more favorably than one whose tax

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obligations are revealed only after an audit or investigation. Taxpayers who want to resolve their past liabilities in this manner should contact, or have their representative contact, the Voluntary Disclosure Unit at **(518) 457-4448**.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.