

February 1, 2016

ALABAMA VOLUNTARY DISCLOSURE PROGRAM

Taxes Eligible for a Voluntary Disclosure Agreement

- The Department will enter into an Agreement for the following tax types:
 - Corporate Income Tax
 - Pass Through Entity Income Tax
 - Business Privilege Tax
 - State Sales & Use Tax*
 - State Administered Local Sales & Use Tax**
 - Rental Tax
 - Utility Privilege Tax
 - Mobile Telecommunications Service Tax
 - Withholding Tax

*Please note that the Department does not enter into Voluntary Disclosure Agreements for zero Sales & Use Tax.

**A State Voluntary Disclosure Agreement does not apply to non-state administered localities in Alabama. The taxpayer must directly contact each non-state administered locality in which it has nexus to negotiate separate Voluntary Disclosure treatment.

- The Department does not enter into Agreements for Individual Income Tax liabilities. However, if an individual taxpayer is a nonresident shareholder/partner of a pass through entity entering into a Voluntary Disclosure Agreement, such entity will file composite returns on the individual's behalf.
- In general, this Program is not open to taxpayers who have at sometime filed returns and/or qualified to do business and have fallen behind in their filing responsibilities within seven years prior to the postmark/receipt date of the request letter.
- The Department agrees to waive late file and late payment penalties and the taxpayer will be billed directly for interest***

***Code Section 40-18-80.1 provides a fee for the underpayment of estimated tax in an amount determined by applying the underpayment rate established by U.S.C. §6621. Since this is technically an interest charge and not a true penalty, taxpayers who have filed Income Tax returns under the terms of a Voluntary Disclosure Agreement will not receive a waiver of this estimate interest.

Nexus Determination

Nexus determinations will not be made through the Voluntary Disclosure Program. Therefore, taxpayers must have their nexus position in place before the initial written request letter is submitted. If the taxpayer is not engaging the services of a professional tax representative, or the taxpayer representative requires additional guidance, Alabama's Nexus Questionnaire may be completed by accessing the below link. In this case, the taxpayer should mark "Potential Voluntary Disclosure Applicant" across the top of the form.

http://revenue.alabama.gov/documents/forms/Nexus_Questionnaire.pdf

The Department limits prior period exposure to three years or to the date nexus was established in the State. In the event that nexus was arguable or if there is no evidence that nexus existed during the three-year look-back period the representative may proceed through the normal registration process. However, the burden of proof is on the taxpayer.

Initial Contact

- Initial contact must be made in a written request.
- The taxpayer can come forward anonymously and disclose their name upon signing the Agreement.
- The Department will in no way seek to identify those taxpayers who wish to remain anonymous.
- To remain anonymous when making initial contact, the taxpayer may engage representation from a tax preparer, accountant or attorney.

In order to be considered for the Voluntary Disclosure Program, applicants must submit a letter that includes all the following information:

1. The nature and detailed description of the business activities that the taxpayer conducts in Alabama.
2. Why the client has not timely filed and remitted taxes.
3. The type of entity formation (i.e., S-Corporation, LLC, etc.). The State must be notified if a corporation is an S-Corporation prior to the signing of a Voluntary Disclosure Agreement.
4. The type of tax the taxpayer will file and remit.
5. A statement that for seven years prior to the postmark/receipt date of the initial written request, the taxpayer is not currently under audit, has not filed Alabama returns for the tax type(s) requested, and has not been contacted by the Department, or an agent of the Department, for the tax type(s) requested. A contact includes, but is not limited to, with regard to potential liability for the type of tax in question: receipt of a Nexus Questionnaire, a telephone call, an audit or notice of audit, payment of tax, registration for tax, registration with the Secretary of State, an extension payment, an estimated tax payment, or the filing of a return.
6. The last four tax year ends of the taxpayer as of the postmark/receipt date of the initial request letter.
7. A statement of whether or not the taxpayer has collected and failed to remit Sales and Use Tax and/or Withholding Tax in the past. If the taxpayer has collected and not remitted such taxes in the past, the tax periods in which such tax was collected must be provided.
8. A statement addressing all tax types for which the taxpayer has a filing obligation in Alabama. For example, taxpayers requesting a Voluntary Disclosure Agreement for Sales and Use Tax and Business Privilege Tax should justify why a Voluntary Disclosure Agreement is not being requested for Income Tax, as well.
9. Taxpayer representative's name, email address and/or telephone number in addition to mailing address.

Responsibility of the Taxpayer

To participate in the Voluntary Disclosure Program, the taxpayer must:

- Enter into a binding Agreement with the Department as drafted by the Director of Tax Policy for at least a three-year look-back period.
- File all returns and forms for the period(s) specifically outlined in the Agreement within 90 days of the effective date of the Agreement.
- Make current extension and/or estimate payments with the Voluntary Disclosure returns, if applicable, in order to receive a waiver of

- penalties.
- Remit all tax and interest due as agreed upon.

Three-Year Look-Back Period

The Voluntary Disclosure Program has a mandatory three-year look-back period.

The three-year look-back period is calculated by determining the last three tax years (or 36 months) which are past due as of the postmark/receipt date of the initial request letter. For example, Corporate Income Tax returns are due two-and-one-half months after tax year end. If the Department receives an initial request in July 2014 for Corporate Income Tax on behalf of a company that has a fiscal year end in June 2014, the look-back period would not include the tax year ending June 2014 since this return is not due until September 2014. In this case, the look-back period would include tax years ending June 2011-2013.

If the taxpayer has collected, but not remitted, Sales or Use Tax and/or Withholding Tax, the look-back period will be extended to include all periods in which tax was collected and not remitted, if applicable.

The effective date of the Agreement is established as the postmark date or receipt date of the initial written request letter.

Disqualification

The taxpayer may be disqualified and the Agreement rendered null and void if any one of the following is found:

- Previous contact of any kind by the Department or an agent of the Department within seven years prior to the initial written request for Voluntary Disclosure. This includes returns filed for the tax types included in the Agreement for tax periods beginning before the look-back period. A contact includes, but is not limited to, with regard to potential liability for the type of tax identified in the Agreement: receipt of a Nexus Questionnaire, a telephone call, an audit or notice of audit, payment of tax, registration for tax, registration with the Secretary of State, an extension payment, an estimated tax payment, or the filing of a return.

- **NOTE: If a taxpayer is considering, or in the process of, entering Alabama's Voluntary Disclosure Program, they should make sure not to initiate any kind of contact or filing, e.g. registering with the Secretary of State or filing an extension, until the request for Voluntary Disclosure has been received by this office.**
- The taxpayer is currently under audit by the Department or an agent of the Department.
- Misrepresentation of any facts set forth in the initial letter of contact.
- Failure by the taxpayer to comply with the terms of the Agreement.

Confidentiality

The negotiation, execution and terms of the Agreement will not be actively discussed with any taxing authorities or any state or governmental authority or with any person or party, except as such disclosures are in compliance with the State's confidentiality laws. The Department has certain exchange of information agreements in place that allow it to exchange tax information with other taxing authorities. The information contained in the Voluntary Disclosure Agreement may be released as specified in the exchange of information agreements, either through a request for general information or through a request for specific information.

Written Requests should be addressed to:

Alabama Department of Revenue
Attn: Brenda Taylor
Voluntary Disclosure Program
50 North Ripley Street
Room 4131
Montgomery, Alabama 36132

NON-USPS carrier should be sent to Zip Code 36104

If you have any questions regarding Voluntary Disclosure, please contact Brenda Taylor, Voluntary Disclosure Administrator, at (334) 353-9577 or brenda.taylor@revenue.alabama.gov.