
Voluntary Disclosure Agreement (VDA) Program

Revenue
Technical Bulletin
TB 71-500-09-1

PURPOSE & SCOPE:

The purpose of this bulletin is to describe both the requirements and benefits of the Mississippi Voluntary Disclosure Agreement Program.

REFERENCES:

Miss. Code Ann. Sections 27-65-39 & 27-7-53

OVERVIEW:

Voluntary disclosure is the process of reporting previously unpaid tax liabilities. Our program is designed to promote compliance and to benefit taxpayers who discover a past filing obligation and liability that have not been discharged. This program is not designed for taxpayers who have engaged in income shifting tax strategies, tax shelter activities, fraud, or negligence. The Department offers the VDA Program as a service to the taxpayer.

Major Points

- The taxpayer will normally file prior year returns for the last three years or thirty-six (36) months. This look-back period is shorter than the look-back period used in assessing delinquent taxpayers.
- The Department agrees to waive late file and late payment penalties and the taxpayer is responsible for computing and remitting the statutory taxes. The Department will calculate the interest.
- The program provides primarily for the remittance of income, corporate franchise, sales and use, and withholding taxes. Each tax is viewed on a separate basis concerning eligibility into the program. A separate agreement will be issued for each tax type. However, a taxpayer may not qualify for the program if it has been contacted for audit for any tax administered by the Department of Revenue (see the disqualification section for more information).
- 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.

Anonymity

- The taxpayer can come forward anonymously and upon acceptance into the program, provide their name along with the necessary forms, filings, and payment within sixty (60) days of acceptance.
- To remain anonymous when making initial contact, the taxpayer may engage representation from a tax preparer, accountant or attorney.

Initiating the agreement process

To apply for voluntary disclosure, a letter should be written to:
Mississippi Department of Revenue
Attention – VDA Program
P.O. Box 1033
Jackson, MS 39215

By submitting a letter the taxpayer acknowledges its obligation to supplement, revise, or replace the letter in the event that before acceptance and a filing of the necessary returns, its material circumstances change, or in the event that it becomes aware at any time of any material omission or material error in the information contained herein.

What must be addressed in the letter request

In order to be considered for the VDA Program, taxpayers must submit a letter request that includes the following information:

- Name, telephone #, address, and email of primary contact (tax representative or other).
- The type of tax(es) to be filed and remitted. Taxpayers requesting to make a voluntary disclosure for one tax must explain and justify (e.g. already filing) why a voluntary disclosure is not being made for other taxes.
- A statement as to whether the taxpayer has been previously contacted by the Mississippi Department of Revenue whether for audit or otherwise. If an affiliated entity has been contacted for audit, this must be disclosed as well.
- A statement of whether or not the taxpayer has collected and failed to remit sales and use tax or withholding tax in the past. If the taxpayer has collected such taxes in the past, state the tax periods in which such tax was collected.
- A statement describing fully the activities that have or may have created a filing requirement in Mississippi, including the dates the activities began, a description of the nature of the business in general, and whether the entity is or was registered with the Mississippi Secretary of State.
- Describe the type of entity (i.e., S corporation, LLC, etc.). An S corporation may apply directly if it qualifies for composite return filing.
- An explanation for the taxpayer's failure to file and pay taxes in Mississippi for its past activities.
- Identify the tax year end of the taxpayer, whether calendar or fiscal year end. If the taxpayer has a fiscal year end, please specify the month and date of each year end for the look-back period.
- Provide an estimate of the total unpaid taxes for the look-back period per tax type.
- Provide any other information that may assist the Department of Revenue in properly evaluating the request.

Nexus Determination

A primary purpose of the VDA Program is to resolve sales and use, and corporate income and franchise tax liabilities when nexus is the central issue. As such, the applicant may be asked to complete a nexus questionnaire as a part of their application process.

Three-Year Look-Back Period

The VDA Program has a standard three year look-back period for income and franchise taxes and consists of the three tax years which are past due based on when the Department received the initial contact. For example, corporate income tax returns are due three-and-one-half months after tax year end. If the Department receives a request in June 2016 for corporate income tax on behalf of a company that has a fiscal year end in May 2016, the look-back period would not include the tax year ending May 2016 since this return is not due until September 2016. In this case, the look-back period would include tax years ending May 2013-2015.

Occasionally, based on level of activity, number of years in which the taxpayer has been doing business in this state, and other situational facts, the look-back period may be extended.

For sales and use or withholding taxes the standard look-back period is thirty-six (36) months. If the taxpayer has collected sales or use tax without remitting them, the look-back period will be extended to include all periods in which sales and use and/or withholding tax was collected.

Responsibility of the Taxpayer

Upon acceptance of the voluntary disclosure request, a letter will be issued and the taxpayer must:

- File all returns and forms for the period(s) required within sixty (60) days of the letter issuance. Returns are to be filed for income and franchise taxes, but a spreadsheet is preferable for both withholding and sales and use taxes broken down by month. Required returns cover the initial look-back period as well as any subsequent period return filings which are due. An extension of time may be granted if for reasonable cause the initial sixty (60) day deadline cannot be met.
- Remit all tax and statutory interest due within sixty (60) days of the letter issuance.
- Upon request, make records available for audit to verify the amount of the liability and the accuracy of the representations made by the taxpayer.

Disqualification

The taxpayer may be disqualified from the program if any one of the following is found:

- Previous contact with the Department within three years prior to the initial request for voluntary disclosure. Previous contact includes receipt of a nexus questionnaire, an audit, notice of audit or telephone call regarding a scheduling of audit, payment of tax, registration for tax, request for extension of time to file, and filing of a return(s) during or 3 years before the look-back period. If a taxpayer is considering entering the VDA Program they should not have any contact until the request for Voluntary Disclosure has been received.
- Registration with the Mississippi Secretary of State (this disqualification only applies to Corporate Income and Franchise Tax).
- The taxpayer is currently under audit by the Department.
- Misrepresentation of facts set forth in the initial letter or related correspondence.
- Fails to make the necessary tax filings and agreed payments within sixty (60) days of the approval letter issuance as described in the taxpayer responsibilities.

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