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Voluntary Disclosures & Amnesty Programs – When to Use Which

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Agenda

- Overview of state voluntary disclosure and amnesty programs
 - Typical voluntary disclosure terms
 - MTC Voluntary Disclosure Program
 - Florida alternative – certified audit
 - Typical amnesty program terms
 - Current and recent amnesty programs
- Pros and cons and strategies for each

Introduction

- Voluntary tax compliance system
- State collection and enforcement costs
- Incentivize taxpayers to voluntarily report unreported and/or unpaid liabilities
- Reduce or eliminate tax exposure
- Certainty in tax compliance

Voluntary Disclosures

- Opportunity to self-disclose and pay previously unpaid or underpaid tax liabilities and deficiency interest
- Formal and informal programs
 - *E.g.*, Fla. Stat. §213.21(7)
 - www.floridarevenue.com/dor/taxes/voluntary_disclosure
- Exception: NM – managed audit only

Voluntary Disclosures

- Typical terms and conditions
 - No prior contact by state; but must contact be specific
 - Limited look-back period (3 to 5 years)
 - Penalty waiver
 - Bar of potential criminal action
 - File prior returns or spreadsheet
 - Promise prospective compliance

Voluntary Disclosures

- MTC Voluntary Disclosure Program
- “Faster, more efficient and less costly than approaching each state separately”
- Sales, use, income and franchise taxes
- States excluded: AK, CA, IL, IN, ME, MS, NV, NY, OH, PA, RI, VA, WY

Voluntary Disclosures

- MTC Voluntary Disclosure Program
 - Detailed procedures
 - Timeline - ~4 mos. on avg.
 - Confidentiality
 - Application w/ good faith estimate
 - Look-back period – 3 to 5 yrs.
 - Min. tax liability \$500 per state
 - File returns & pay tax + interest due

Voluntary Disclosures

- Florida Alternative
 - Certified Audit Program
 - Registered taxpayer
 - No notice of DOR audit
 - Engage DOR-certified auditor
 - DOR-approved audit plan
 - Full penalty waiver
 - Interest waiver
 - First \$25,000
 - 25% of excess over \$25,000

Amnesty Programs

- Resolve tax liabilities known and unknown to state
- State notifies taxpayers with known liabilities
- Carrot and stick approach

Amnesty Programs

- Common terms and conditions
 - Limited taxes and periods
 - Eligibility may be restricted
 - Civil and criminal penalty waiver
 - Interest compromise usually
 - File returns and pay liability within limited timeframe
 - Limited or no ability to compromise tax due
 - Refund of payments usually barred

Amnesty Programs

- Current/recent amnesty programs
 - PA – HB 1198 (Act 84 2016)
 - VA – HB 2246 (2017)
 - SC – SB 526 (2015)
- Historic amnesty programs
 - MTC website lists amnesty programs since 2009 [www.mtc.gov/nexus-program/state-tax-amnesties]
 - FTA website lists amnesty programs since 1982 [www.taxadmin.org]

Amnesty Programs

- PA amnesty program
 - All taxes administered by PA DOR
 - Available 4/21/17 – 6/19/17
 - Ineligible if participated in 2010 amnesty
 - Applies to known and unknown liabilities as of 12/31/15
 - Unknown liability look-back limited to 1/1/11
 - Waive penalties + $\frac{1}{2}$ interest due
 - File application, returns, payment
 - 5% non-participation penalty

Amnesty Programs

- VA amnesty program
 - All taxes administered by VA DOT
 - Open for 60-75 days during fiscal 2018
 - Applies to pre-2016 liabilities
 - Ineligible if assessed less than 90 days before program opens
 - Ineligible if tax fraud or evasion
 - Waive penalties + ½ interest
 - 20% non-participation penalty

Amnesty Programs

- SC amnesty program
 - DOR authorized to implement amnesty program on 60 days' notice to General Assembly
 - Ineligible if criminal investigation or prosecution
 - Penalty and interest may be compromised
 - Amnesty may be rescinded for mutual mistake, fraud or misrepresentation
 - Up to 10% non-participation penalty

Pros and Cons of Voluntary Disclosures and Amnesty Programs

VDAs

- Only unknown liabilities
- Available any time
- Open eligibility
- May be limited to non-filers
- Audit lottery
- May allow additional compromises
- Usually administrative discretion

Amnesties

- Known and unknown liabilities
- Limited time period
- Targeted eligibility
- Open to filers and non-filers
- Carrot and stick
- Terms set for all participants
- Usually statutorily authorized

Pros and Cons of Voluntary Disclosures and Amnesty Programs

VDAs

- May not waive all penalties for taxes collected but not remitted
- May not include locally administered taxes
- Negotiate prospective only?

Amnesties

- Generally available unless already in criminal system
- May include specified locally administered taxes (e.g., AZ)
- Generally have to pay past tax and interest for defined period

Pros and Cons of Voluntary Disclosures and Amnesty Programs

VDAs

- May only need to file spreadsheet of liabilities
- May negotiate terms anonymously until agreement
- May request payment plan
- Possibly allow for refunds

Amnesties

- Must file application plus returns for all periods included
- Typically no negotiation of terms
- All tax and interest due must be paid by amnesty program end
- Generally refunds are barred

Pros and Cons of Voluntary Disclosures and Amnesty Programs

- Distinct pros and cons to each approach
- If eligible for both voluntary disclosure and amnesty, calculate total cost under each
 - Length of look-back
 - Penalty reduction
 - Interest reduction
 - Compliance costs
- Typically, option to choose is mutually exclusive

Questions

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