

## **VOLUNTARY DISCLOSURE OF SALES AND USE TAX LIABILITIES**

The Sales and Use Tax Division (Division) is frequently contacted by practitioners and businesses that have discovered Ohio tax liabilities and wish to resolve the issues without risk of the consequences normally associated with audit. Taxpayers are eligible for voluntary disclosure if they notify the Division of their intentions prior to audit contact, tax discovery, or criminal investigation. In cases where there is no liability for prior periods, voluntary disclosure is not appropriate. However, if future liability is anticipated, registration at the proper time is advisable. Since the Ohio statute does not specifically address voluntary disclosure, use the following guidelines in making your proposal.

### **THE DISCLOSURE**

The taxpayer or practitioner must notify the Division of an interest in making a disclosure in writing. The Division will then assign a file number for tracking purposes. At this point, any audit action by the Division is deferred in the interest of reaching mutually acceptable terms for a voluntary disclosure. If agreement is not reached, audit contact may be resumed. The proposal is required to be put in writing and include statements concerning:

What is being sold and the typical nature of the transactions (in general terms); how the product(s) is marketed in Ohio or a description of any other nexus creating activity including the date that activity began. If tax has been collected; Tax liability for purchases as well as sales; and Any contacts the client has had with the Division with respect to an audit or investigation. (If there has been sales and use tax audit contact, the Division will proceed with the audit or investigation and voluntary disclosure will not be an option.) Receiving a nexus questionnaire does not prevent entering into a voluntary disclosure.

### **DUTIES OF THE TAXPAYER**

To complete a disclosure, and when applicable, the taxpayer is required to register and begin complying with the Ohio sales and use tax statutes. Generally, the Division will not entertain a prospective only offer when nexus exists. If tax has been collected from customers but not remitted, there is no limitation to the look-back period. All tax collected must be paid. If tax should have been collected on Ohio sales but was not, or if Ohio tax is due on purchases, that tax and interest must be resolved for a limited number of years prior to contact. (The number of years will vary depending upon the effective date of nexus.) Individual circumstances will determine how tax and interest for prior years will be paid. Options include:

A voluntary payment of the tax (client is free to bill their Ohio customers) including a county breakdown (if none is available, tax will be computed at a rate determined by the Division) and interest, or the client can bill their Ohio customers and turn the collected tax and interest over to Ohio. The client must also provide the transaction information on sales where the Ohio customer did not respond or claimed exemption, or

The client must provide the Division with the customer transactions in an acceptable electronic format for our disposition.

### **DUTIES OF THE DIVISION**

In exchange for the taxpayer coming forth voluntarily, the Division will agree to:

Waive civil and criminal penalties;

Waive filing requirements prior to registration;

Waive audits prior to the disclosure period;

Avoid a voluntary disclosure of the taxpayer's identity to other parties. (The Division does have the right to honor the terms of our formal information sharing agreements when presented with a written request for information); and

Allow the client to remain anonymous until closing.

The Division also reserves the right to examine records covering the disclosure period.

It is understood that the Division enters into these agreements in good faith and should willful misrepresentation be shown, the Division will not be held to the terms.

#### **THE AGREEMENT**

The Division will respond to the disclosure request with an agreement that must be signed and returned with supporting documentation and payment of any tax due. Once the Division has reviewed the documentation and verified there has been no audit, enforcement or discovery contact, a signed copy of the agreement will be returned with a billing for any interest due.

#### **CLOSING REQUIREMENTS**

The registration application, spreadsheet and remittance are to be submitted together in order to complete the agreement. Any registration will be effective on the day following the last day of the disclosure period. Any questions should be directed to Division administration by calling (614) 466-4810 or faxing (614) 995-5797.

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