

SPECIAL SECTION: TAXATION LAW

Should Taxpayers Confess to Owing Back Taxes?

Choosing New York's Voluntary Disclosure Program

by Karen J. Tenenbaum, Esq.

When taxpayers know they owe back taxes but have not been contacted by the government, they are often tempted to keep quiet and hope they do not get caught. However, that could mean paying hefty penalties and interest on top of what they owe if their liability is discovered. In addition, they may face criminal prosecution in some cases. Best practice is to address tax debts as soon as possible. One option may be to confess to owing taxes under New York State's Voluntary Disclosure

includes individuals and businesses, for all types of tax administered by the New York State Department of Taxation and Finance (NYSDTF).

- Taxpayers must come forward before the state comes for them. If they are already under audit or investigation for the tax type and tax year(s) being disclosed, they cannot participate. That includes if they are a party to a criminal investigation (even if they have not yet been notified); if NYSDTF has already identified the disclosed deficiency; or if they



and Compliance Program. Before taking that step, there are several important points to consider:

- Taxpayers can avoid penalties and prosecution. Under the Voluntary Disclosure Program, if the taxpayer discloses the taxes owed, enters into an agreement to pay those taxes, and continues to pay taxes in the future, he or she can avoid criminal prosecution and steep late filing and late payment penalties.

- It is open to any eligible taxpayer. This

participated in a tax avoidance transaction that is a Federal or New York State reportable or "listed" transaction.

- A limited look-back is available. Taxpayers who failed to file for more than three years may wish to request a limited look-back period, which provides that they only have to file and pay taxes for the last three (or six, in some cases) years. However, there is no limited look-back for collected trust taxes and where the taxpayer committed fraud or tax evasion.


- Taxpayers can only file one voluntary disclosure for each tax type. If the taxpayer owes multiple tax types (ex. income, sales, or partnership tax), he or she may file multiple Voluntary Disclosures but only one per tax type.

- Failure to comply with the Voluntary Disclosure agreement has harsh consequences. If the taxpayer does not complete or defaults on the Voluntary Disclosure agreement, he or she will be precluded from filing a subsequent Voluntary Disclosure for that tax type. New York State can also use any disclosed information against the taxpayer and pursue civil and criminal penalties.

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- A payment plan may still be possible. Taxpayers who cannot pay in full at the time of acceptance of the agreement may qualify for an Installment Payment Agreement or an Offer-in-Compromise.

While New York's Voluntary Disclosure Program can be a good option for those who qualify, taxpayers should discuss their options for resolving their debt with a tax professional. 



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