

VOLUNTARY DISCLOSURE AGREEMENT (VDA)

Description of Program

The Oklahoma Voluntary Disclosure Agreement Program is designed to promote compliance and to benefit taxpayers who discover a past filing obligation and liability that has not been discharged. It is only available for those taxpayers that have not registered, not filed returns, not made a tax payment and not been contacted by the Oklahoma Tax Commission (OTC), or an agent of the Commission, including the Multistate Tax Commission. The program applies to any tax administered by the OTC and to any type of domestic or foreign taxpayer that is subject to tax in this State.

A Voluntary Disclosure Agreement (VDA) does not apply to taxpayers that filed returns but underreported the tax due or that had or have applied for a tax account at any point in the past for the tax type in question.

A major component of the VDA Program is to resolve sales and use, withholding, corporate income, and franchise tax liabilities when nexus is the central issue. The Commission considers contact and the filing/payment of returns on a tax-by-tax basis. For example, if a taxpayer has been contacted or has filed/paid a return for one tax type, it will not preclude the taxpayer from entering the Program for other tax types.

Taxpayers or their authorized representatives wanting to enter into a VDA should complete Form 892 Application for Voluntary Disclosure and submit it to the Oklahoma Tax Commission.

I. Qualifying for Voluntary Disclosure

To qualify for the Voluntary Disclosure Agreement, a taxpayer must meet all of the following criteria:

- The taxpayer has not been contacted by the OTC, an agent of the Commission, or Internal Revenue Service with respect to any tax for which the taxpayer is requesting voluntary disclosure.
- The taxpayer has never filed a return, had an account, or applied for an account for the specific tax type under consideration.
- The taxpayer does not have outstanding tax liabilities other than those reported through the voluntary disclosure.
- The taxpayer is not under audit for any tax type.

- The taxpayer pays the tax due within ninety (90) days from the date of approval by the OTC of the Voluntary Disclosure Agreement.
- The taxpayer, upon request, makes records available for audit to verify the amount of the taxpayer's liability and the accuracy of the representations made by the taxpayer.
- The taxpayer cannot have participated previously in a Voluntary Disclosure Agreement for the same tax type.
- The taxpayer must note whether tax was collected or not. If tax was collected, the first date that tax was collected must be provided.

II. **Benefits of Voluntary Disclosure**

A taxpayer whose Application for a Voluntary Disclosure is approved will receive:

- A look-back period limiting the requirement to file returns and pay tax to three (3) years for taxes filed annually or thirty-six (36) months for taxes that do not have an annual filing frequency. If the taxpayer has collected taxes from others, such as sales, and use taxes or withholding taxes and not reported those taxes, the requirement to file and pay will be extended to cover those periods for which that tax was collected but not remitted.

To determine the filing requirement for voluntary disclosure for taxes that are filed annually, a taxpayer would file the most recent return that is past due, plus returns for the two (2) previous years. For income taxes, the most current tax year due is not considered past due until all extensions to file have passed. The filing requirement for taxes that do not have an annual filing frequency is the most recent return that is past due, plus returns for the previous thirty-five (35) months.

- Taxpayers have ninety (90) days from the VDA date to determine the liability, prepare the returns or spreadsheets, and to pay the amount of tax due. A spreadsheet may be submitted to report sales, use, or withholding tax instead of filing a return for each period involved.

- A waiver of penalty and one-half (1/2) accrued interest will be waived by operation of law and no further action shall be required on agreements where tax was not collected from customers.
- Taxpayers that collected a trust tax, such as sales and use tax or withholding tax, but did not pay it to the OTC will receive consideration for waiver of penalty only. A taxpayer receiving a waiver of penalty in excess of twenty-five thousand dollars (\$25,000) from the Commission must also obtain District Court approval and return the Order to the OTC. Failure to return the Court-approved Order within six (6) months will nullify and void the Commission's waiver order.

III. **How to Apply**

Taxpayers or their authorized representatives can anonymously complete the application for **business** or **income tax** and mail it to the following address:

Voluntary Disclosure Agreement Program
Oklahoma Tax Commission
P.O. Box 269054
Oklahoma City, OK 73126-9054

IV. **Review and Approval of Voluntary Disclosure Requests**

OTC will review an application for voluntary disclosure and return a blank VDA covering the applicable tax types. Taxpayers or their representatives have six (6) months to return the signed agreement to the Commission. Upon receipt, the application will be reviewed to verify that the business meets the qualifications. At that time the Application will either be approved or denied. If the application is approved, the OTC will sign a Voluntary Disclosure Agreement and send it to the taxpayer or its representative.

If the OTC determines that the taxpayer does not qualify for the Voluntary Disclosure Agreement Program, the taxpayer or its representative will be notified.

In the event that the taxpayer or its representative misrepresents any information or applicable tax data, the VDA may be voided, and the OTC can take action as if the agreement does not exist.

V. Audits for Voluntary Disclosure Period

OTC reserves the right to examine the books and records of the business for periods prior to registration, solely for the purpose of ascertaining the correctness of representations made by the business to the OTC.

OTC will assess any tax determined to be due that is not discharged under the Voluntary Disclosure Agreement. All applicable penalties and interest will apply to additional taxes discovered to be due that have not been paid.

A taxpayer contacted by the OTC for the purpose of examination after an Application for Voluntary Disclosure has been submitted, but prior to entering into an agreement by OTC, may disclose same to suspend audit activity pending the outcome of the VDA application.

VI. Confidentiality

The Commission will not release the identity of a taxpayer that enters into a Voluntary Disclosure Agreement or the terms of the agreement unless the information must be released upon request under the provisions of Title 68 Section 205 or existing information exchange agreements.

VII. Any Questions?

Please contact the Compliance Division at (405) 521-3251, or [e-mail](mailto:otcmaster@tax.ok.gov) at otcmaster@tax.ok.gov.