VOLUNTARY DISCLOSURE

I. BACKGROUND

It is the practice of the New York City Department of Finance ("DOF") to encourage all taxpayers to meet their obligation to file City tax returns and pay all taxes due. Sometimes taxpayers, due to reasonable causes and not willful neglect, fail to meet these obligations on a timely basis. DOF, like most tax administration agencies, has established procedures to permit such delinquent taxpayers to come forward voluntarily and bring themselves into compliance. Since the overwhelming majority of taxpayers meet their City tax obligation on a timely basis, DOF, in encouraging delinquent taxpayers to come forward, has established procedures that will not compromise overall compliance or allow taxpayers who intentionally fail to comply an avenue to avoid civil or criminal sanctions.

The reasons and circumstances for the delinquency vary widely and DOF has not established a single set of terms for voluntary disclosure cases. For example, we have not set any fixed limit on the number of delinquent years that must be paid as part of a voluntary disclosure. However, we have established general procedures for auditors to follow in bringing taxpayers into full compliance.

Some delinquent taxpayers may be out of compliance with both New York State and City taxes. Heretofore, taxpayers have had no simple way to address State and City delinquencies utilizing a single disclosure procedure. Clearly, there are benefits to both jurisdictions as well as to taxpayers in allowing a taxpayer to become compliant with State and City taxes utilizing a unified procedure.

While the earlier SAP on this subject, SAP 96-5-AU, provides general guidance on this subject, this SAP will provide a more comprehensive procedure for auditors to follow and SAP 96-5-AU is hereby superseded.

II. SCOPE

This SAP provides updated general guidance to DOF staff on how to handle voluntary disclosures in order to ensure that all voluntary disclosures are given consistent treatment. This general guidance includes a description of what is a voluntary disclosure, who is eligible to make a voluntary disclosure, how the initial contact is made as well as the steps necessary to conclude the voluntary disclosure process. Finally, this SAP offers guidance to DOF staff on how to handle voluntary disclosures where the taxpayer seeks a unified voluntary disclosure for City and State taxes.

A taxpayer that merely wishes to file returns for all delinquent years and fully pay any resulting liability may do so at any time. Such voluntary fillings of delinquent returns are not covered in the SAP.

III. PROCEDURE

A. General Procedures

1. What is a Voluntary Disclosure?

Typically, a voluntary disclosure is made where a taxpayer has failed to fulfill its filing obligations for one or more taxes and wants to become compliant. The taxpayer may also seek abatement of penalties or a limit on the number of years for which the taxpayer must comply. Usually the initial contact is made through a representative on an anonymous basis and the taxpayer is seeking a written agreement that specifies the steps and payments necessary to satisfy any existing delinquent liability.

2. Eligibility

A taxpayer may make a voluntary disclosure for one or more tax periods provided the reason for the delinquency is not due to intentional disregard of the tax obligations or fraud. The taxpayer must document the reason for the delinquency and the reason for the delinquency is subject to review as part of the audit process. Any voluntary disclosure agreement made between DOF and a taxpayer will become null and void if there is a final determination that incorporates a finding that the taxpayer intentionally disregarded its tax obligation or committed fraud for the period or periods covered in the agreement.

3. Initial Contact

A taxpayer may come forward directly or through a representative on an anonymous basis. The initial contact may be made to any Audit and Enforcement Division or Revenue Operations Division staff member orally or in writing. Information concerning the oral or written voluntary contact should be forwarded to the Division Disclosure Coordinator. The Division Disclosure Coordinators for Audit and Enforcement and Revenue Operations (collectively "Coordinators") will jointly coordinate the assignment of such requests to ensure that appropriate staff is assigned to work with the taxpayer or a representative.

4. Concluding a Voluntary Disclosure

Since a taxpayer making a voluntary disclosure is generally seeking an advanced written commitment from DOF that DOF will waive penalties or limit the number of years for which the taxpayer must comply, we require the taxpayer to make the request for a voluntary disclosure agreement in writing and provide certain information in support of its request. DOF will ask the taxpayer or the taxpayer's representative to include the following elements in the written request:

(a) A statement of facts, in anonymous form, describing the taxpayer's activities in New York City and New York State, when these activities commenced, and the number of employees and their titles involved in such activities. The statement should indicate in which tax year taxpayer believes its tax obligation first arose. (Note: there is no limit in the law as to how many past years the Department may examine for a non-filing entity under a voluntary disclosure. The period is determined by the facts and circumstances.)

(b) An explanation why the taxpayer has failed to file tax returns and pay taxes in the past. Penalties may only be waived for reasonable cause.

(c) A computation of the taxpayer's approximate tax liability on a year by year basis.

(d) An affirmation by the taxpayer that they have not been previously contacted by the Finance Department with respect to any potential tax liability for the tax that they are now disclosing, that they are not currently under audit for any City tax and that the taxpayer understands that all disclosed facts are subject to audit verification and that, if it is determined that a material fact has been omitted or misrepresented, any agreement reached will become null and void.

(e) Other information or data deemed appropriate.

Once the fact gathering is complete and DOF determines that the conditions for a voluntary disclosure agreement are satisfied, the DOF representative and the taxpayer can discuss the terms for the written voluntary disclosure agreement. The agreement must include the following elements or terms:

(a) A summary of the facts and representations.

(b) Disposition of penalties and the reason therefor.

(c) Years covered.

(d) A statement that all returns and covered periods are subject to audit. Any material omission or misrepresentation is grounds for recission of the agreement.

(e) The agreed delinquent taxes must be paid within a specified time period.

(f) A commitment to file all tax returns and make estimated payments due after the date of this agreement on a timely basis.

All voluntary disclosure agreements must be reviewed and approved by the Coordinators. The agreement must be signed for DOF by a duly authorized DOF employee.

B. City and State Unified Procedure

1. General

The New York State Department of Taxation and Finance (T&F) and DOF have established a Unified Voluntary Disclosure Procedure (UVDP). T&F's policies and procedures in this area are generally comparable to those of DOF. The basis for abating penalties for most State and City taxes is similar. In addition, a number of taxes which have both State and City counterparts are parallel (e.g., State Business Corporation Tax - Tax Law Article 9A and New York City General Corporation Tax - City Administrative Code, Title 11, Chapter 6). Moreover, the State and City recognize that there is an important difference between coming forward voluntarily to disclose back taxes when the likelihood of discovery is minimal, and coming forward when the threat of discovery is imminent or highly probable. Since the UVDP is intended to benefit the forthright taxpayer, the State and City will distinguish those taxpayers who come forward of their own volition from those who simply attempt to appear forthright (only because they sense pending discovery).

2. Unified Voluntary Disclosure Procedure

a. Eligibility

A taxpayer with a delinquency for a City Tax with an analogous State delinquency can simultaneously disclose to both jurisdictions following the UVDP . DOF and T&F have designated Unified Disclosure Coordinators to coordinate a response to a request for UVDP. A request that is accepted by DOF and T&F for unified consideration will be acted upon jointly. Moreover, taxpayers that complete the UVDP are to be offered comparable terms and conditions as established jointly by DOF and T&F. A single Voluntary Disclosure Agreement can be utilized to conclude the UVDP. Where a taxpayer opts to pursue a separate disclosure process for each jurisdiction, DOF staff are not bound by the terms and conditions offered to the taxpayer by T&F in resolving any City tax liability but are to follow the procedure in A. above.

The following are examples of taxpayers who would not be eligible for UVDP:

(1) A taxpayer who has already been contacted by T&F or DOF in connection with an inquiry into the tax type for which disclosure is sought.

(2) A taxpayer who has been sent a notice of tax audit by T&F or DOF and such audit includes the tax type for which disclosure is sought.

(3) A taxpayer who is subject to a Federal audit of the type which is commonly reported to the taxpayer's home state.

(4) A taxpayer who was properly registered or licensed with T&F or DOF (in the tax type for which disclosure is sought) and who surrendered or canceled that license or registration without proper cause or subsequently ceased filing properly.

(5) A taxpayer who has been notified of a pending criminal investigation by T&F or DOF.

b. How Requests are Made

A taxpayer may come forward through any T&F or DOF employee on an anonymous basis. Any contact made through a T&F employee should be forwarded immediately to the Director of the Research and Discovery Bureau.

(1) Initial Contact with DOF
Any contact made through a DOF employee should be forwarded to the UVDP Coordinator for DOF. The DOF UVDP Coordinator will then forward the unified voluntary disclosure to the T&F Director of the Research and Discovery Bureau who will track the matter for State purposes and coordinate the unified agreement with DOF. The Director of the Research and Discovery Bureau will forward the disclosure to the appropriate State Audit Division Bureau Director for resolution. The Audit Division Bureau Director will then coordinate the terms of the agreement with the DOF UVDP Coordinator.

(2) Initial Contact with T&F
Any contact made through T&F employees should be forwarded to the UVDP Coordinator for T&F (Director of Research and Discovery). The T&F UVDP Coordinator will forward the disclosure to the appropriate State Audit Division Bureau Director for resolution. The Audit Division Bureau Director will then coordinate the terms of the agreement with the DOF UVDP Coordinator.

c. Information Required

The prospective taxpayer must present the disclosure in writing (identification of the prospective taxpayer is not required at this time). The letter should set forth details relating to the following:

(1) A statement of facts describing the taxpayer's activities in New York City and New York State, when these activities commenced, and the number of employees and their titles involved in such activities. The statement should indicate in which tax year taxpayer believes its tax obligation first arose.

(2) An explanation why the taxpayer has failed to file tax returns and pay taxes in the past. Penalties may be waived for reasonable cause.

(3) A computation of the taxpayer's approximate tax liability on a year by year basis.

(4) An affirmation by the taxpayer that they have not been previously contacted by T&F or DOF with respect to any potential tax liability for the tax that they are now disclosing, that they are not currently under audit for any State or City tax and that the taxpayer understands that all disclosed facts are subject to audit verification and that, if it is determined that a material fact has been omitted or misrepresented, any agreement reached will become null and void.

(5) Other information or data deemed appropriate.

The prospective taxpayer should also communicate any conditions for disclosure and include any other information that it believes will contribute to an equitable resolution.
If the initial proposal as put forth by the prospective taxpayer is agreed upon by T&F and DOF, a Voluntary Disclosure Agreement can be drawn up immediately and presented to the T&F Bureau Director and the DOF Division Disclosure Coordinator for approval.

If the T&F and the DOF Coordinators agree that additional information is required which was not included in the written request , the T&F Coordinator will contact the taxpayer or representative to obtain the information.

d. Written Agreement

Once the fact gathering is complete and T&F and DOF determine that the conditions for a voluntary disclosure agreement are satisfied, the T&F and DOF Coordinators and the taxpayer can negotiate the terms for the written voluntary disclosure agreement. The agreement must include the following elements or terms:

(1) A summary of the facts and representations.

(2) Disposition of penalties and the reason therefor.

(3) Years covered.

(4) A statement that all returns and covered periods are subject to audit. Any material omission or misrepresentation is grounds for recission of the agreement.

(5) The agreed delinquent taxes must be paid within a specified time period.

(6) A commitment to file all tax returns and make estimated payments due after the date of this agreement on a timely basis.

All voluntary disclosure agreements must be reviewed and approved by the T&F and DOF Coordinators. The agreement must be signed for T&F by the Director of the Audit Division and for DOF by a duly authorized DOF employee.