

Voluntary Disclosure: An Alternative to Arizona's Upcoming Amnesty Program

by James G. Busby Jr.



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In this article, Busby explains how unsatisfied tax liabilities can be resolved under Arizona's voluntary disclosure program and identifies some of the issues to consider when deciding whether to pursue a voluntary disclosure agreement rather than participate in the state's amnesty program.

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As taxpayers, all of us should pay our fair share. However, for a variety of legitimate and illegitimate reasons, sometimes taxpayers do not timely pay the right amount of tax. When that happens and Arizona taxing authorities discover it, they generally assess penalties that often amount to at least 25 percent of the tax liability, plus interest, which can really add up over time — especially if the taxpayer has lost the protection of Arizona's standard four-year statute of limitations by underreporting tax by 25 percent or more.

Accordingly, many Arizona taxpayers are planning to satisfy outstanding tax liabilities during the state's upcoming amnesty period scheduled for September 1 through October 31, 2015. However, some taxpayers would be better off pursuing a voluntary disclosure agreement (VDA).

How VDAs Generally Work in Arizona

As the name suggests, VDAs are agreements that the Arizona Department of Revenue enters into with taxpayers that voluntarily disclose unsatisfied tax liabilities. Because our tax system relies on voluntary compliance and the department is unable to catch every person and company that does not pay taxes or that did not pay as much tax as it

should have, the department rewards taxpayers that voluntarily disclose unsatisfied tax liabilities.

The department's VDA program applies to transaction privilege (sales) tax, use tax, withholding tax, individual income tax, and corporate income tax obligations.

Taxpayers that enter into VDAs with the department generally get all of the penalties that otherwise would be assessed abated, and those that owe taxes for more than four years back often can get the department to agree to accept just four years of past taxes, plus interest. Taxpayers that approach the department with gray nexus or tax issues may be able to get the department to agree to abate all or some of the interest and past taxes as well.

When an Arizona VDA May Be Preferable to Amnesty

While the Arizona Legislature periodically establishes amnesty programs that last for a couple of months at a time, the department always entertains offers from taxpayers to enter into VDAs. So, VDAs are a good option for taxpayers that miss out on a particular amnesty period.

For taxpayers that have the luxury of deciding between pursuing relief under amnesty and pursuing a VDA, a VDA may be a better option for taxpayers that: (1) have outstanding tax liabilities for more than four years that are not protected by Arizona's standard four-year statute of limitations; (2) would find it burdensome or expensive to complete the original or amended tax returns that must be completed in order to participate in Arizona's upcoming amnesty program; and (3) want to resolve city privilege (sales) tax liabilities at the same time they resolve state sales tax liabilities.

On the other hand, while Arizona's upcoming amnesty period requires taxpayers to file original or amended tax returns, does not limit the statute of limitations, and does not apply to the cities, it may be a better option for taxpayers that would owe a lot of interest under Arizona's VDA program because interest is generally not abated as part of a VDA.

How to Pursue a VDA in Arizona

Although taxpayers that decide to pursue VDAs in Arizona can attempt to negotiate agreements directly with the department, taxpayers that have representatives anonymously negotiate for them generally have more leverage

than they would if they approached the department themselves because, when working through representatives, taxpayers can walk away from negotiations and remain anonymous if they choose to do so.

VDAs may be negotiated either directly with the department or through the Multistate Tax Commission's multi-state VDA program. Taxpayers that need to resolve the same issues in multiple states may save time by negotiating through the MTC, which will coordinate with the appropriate states on taxpayers' behalf.

The department and the MTC have voluntary disclosure applications on their websites that require taxpayers to disclose information about their nexus with Arizona; the type and amount of their unsatisfied tax liability; the types of state taxes they have paid, if any; whether they collected sales taxes from their customers, if applicable; whether the taxpayers have been contacted by the department; and the VDA terms they propose.

Tax professionals who encounter taxpayers with unsatisfied Arizona tax liabilities should help them evaluate whether Arizona's VDA program is the best way for them to satisfy their outstanding tax liability. ☆



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