EisnerAmper

MTC - Voluntary Disclosure Agreements

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Gary Bingel is the Partner-in-Charge of the firm's State and Local Tax Group. With over 25 years of experience, his expertise focuses on state and local income taxation, and sales and use tax consulting. Gary has significant experience serving clients in the manufacturing, retail, pharmaceutical, biotechnology, technology, and service industries.

Gary's specific areas of service encompass income/franchise tax refund reviews; state tax analysis of restructurings; due diligence reviews; sales tax studies; and nexus reviews. In addition, he is experienced in exposure remediation/voluntary disclosure and amnesty agreements; credits and incentives negotiation and analysis; and ruling requests.

Prior to joining the firm, Gary was Partner and Managing Director in an advisory and consulting firm, where his clients ranged from start-up entities to Fortune 500 companies. His work centered on state income and franchise tax consulting, in addition to consulting on various sales and use tax issues. Gary also has significant experience in the area of state credits and incentives, including negotiations and site selection and serving as a State and Local Tax Manager for Big 5 and Big 4 accounting firms.

A frequent lecturer, Gary has presented on various state and local tax topics to professional organizations, including Tax Executives Institute and various CPA organizations. He also instructs various courses at the Income Tax School of the Institute for Professionals in Taxation.

SPECIALTIES

- State & Local Income/Franchise Tax
- Sales & Use Tax

CREDENTIALS/EDUCATION

- Certified Public Accountant (CPA)
- Certified Member of the Institute of Professionals in Taxation (CMI)
- Villanova University: BS, Accounting
- Villanova University College of Commerce & Finance: MBA
- Villanova University School of Law: JD, cum laude

AFFILIATIONS

- American Institute of Certified Public Accountants
- Institute for Professionals in Taxation
- Pennsylvania Institute of Certified Public Accountants
- Pennsylvania Bar Association
- Philadelphia Bar Association

The Good

- Generally experiences with VDA processes are positive. Most VDA representatives seem to want to help with the process as well as with resolving issues / uncertainties.

- Some VDA processes are fairly easy and straightforward with appropriate guidance.

- Generally a get good way to clean up prior year liabilities and get in compliance.

The Good

- Allowing spreadsheets as opposed to actual returns as an option is often beneficial

- Allowing “alternative” options, or “unofficial” VDA’s where you can’t enter into the program for some reason but can negotiate similar benefits.

The Bad

- Some VDA departments are short staffed, and thus can take a long time to process / finalize a VDA.
  - One state currently has an 18-24 month backlog. Many times VDA's are due to some sort of transaction, and there may be time limits re: escrow, etc.

- Some processes are unclear or open to interpretation – *e.g.*,
  - Some states may have a 3 year period, but this may need to be requested and must show reasonable cause;
  - Some have a standard look back period, but state can go back further if reason for not filing is deemed "excessive." This uncertainty is a deterrent to taxpayers looking to come forward and do the right thing.

The Bad

- Some states require there to be a liability over a certain amount, or a liability in each year of the VDA, which can extend the lookback period. Again, this can be a deterrent, and negate the whole purpose of seeking a VDA.

- Need to electronically file all years for income tax VDA – often tax software only goes back 2-3 years, which may require you to manually input an entire income tax return for older years. This can be very costly and time consuming.

The Bad

- Some states require separate agreements for different taxes as opposed to one agreement that includes all taxes.

- Being disqualified for “old and cold” years, *e.g.*,
  - Having filed a return 10-15 years ago, or having an unresolved notice from this time period.

- Disqualifying taxpayers when they have taxes collected but not remitted. Many times small amounts were collected due to administrative error. These would seem to be the instances where VDA’s should be most encouraged.

Areas for Improvement

- VDA's involving successors in interest. Many times VDA's may include prior entities due to a merger or acquisition. There is little guidance regarding how to handle these situations, and often they are addressed ad hoc. Sometimes it is required to do separate VDA's for each entity, which can often mean that each VDA / entity must meet all the requirements – extending the lookback periods, and/or disqualifying one of the entities.
    - *E.g.*, Newco may only be in existence for 2 years, and the state requires a liability for 3 years. Even if you can do a VDA for Newco, you often also have to do one for Oldco, which results in a 5 year lookback as opposed to 3 years, and two agreements as opposed to one. Often the older information is difficult to get, or is unavailable.

Areas for Improvement

- Not all states have one “consolidated” agreement for all taxes – some states require a separate agreement for each type of tax.

- Some states have “expedited” programs, which don’t really expedite things.
  - What is relevant for most taxpayers is the length of time from when they decide to do a VDA to when the VDA closes (as opposed to the timeframe from first contact to closing the VDA). Having to delay submitting a VDA for 45-60 days because you have to file all returns at time of initial submission doesn’t really save a lot of time. It just front loads it, and can be a disincentive.

Areas for Improvement

- Suspending VDA programs during amnesty programs. Taxpayers should have the option of which program to pursue.

- Some states are slower to include new taxes in VDA programs. Again, this can be a disincentive to pursue a VDA if you need a 3 year liability but the tax itself is only 2 years old.

- There should be a 90 day window for filing returns. Shorter time periods almost always require an extension.

Questions?

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