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STATEMENT OF AUDIT PROCEDURE

Procedure for Voluntary Disclosure and Compliance Program

I. BACKGROUND

The New York City Department of Finance (DOF) encourages all taxpayers to file city tax returns and to pay taxes owed on time. Pursuant to administrative code section 11-131, the Department of Finance now allows taxpayers who are delinquent to come forward voluntarily to comply with New York City tax laws. For city taxes administered by the New York State Department of Taxation and Finance (NYS), taxpayers must visit www.tax.ny.gov for more information about participating in the Voluntary Disclosure program. DOF believes that encouraging delinquent taxpayers to come forward will increase tax compliance.

The Department of Finance has established general procedures that auditors can follow to help taxpayers comply. Some taxpayers may qualify for a limited look-back period of six years (for trust fund taxes or intentional tax evasion) or three years (for most other circumstances). Some otherwise eligible taxpayers may not be offered a voluntary disclosure agreement when doing so will impede rather than further the goal of overall compliance. For example, a taxpayer who is late in filing a single return may not utilize the program to avoid the imposition of a single late-filing penalty.

II. SCOPE

This Statement of Audit Procedure (SAP) provides general guidance to DOF staff on how to handle requests to participate in the Voluntary Disclosure and Compliance Program (VDCP) so that all requests are given consistent treatment. Specifically, the SAP:

- describes a voluntary disclosure;
- explains who is eligible to make a voluntary disclosure;
- explains how the initial contact is usually made; and
- sets out the steps necessary to utilize the voluntary disclosure process;

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

III. PROCEDURE

A. What is Voluntary Disclosure?

Typically, a voluntary disclosure is made when a taxpayer owes tax and has not filed the related tax returns. The taxpayer may also seek the abatement of penalties and/or a limit on the number of years to file. The taxpayer or a representative must make the first contact with the Department of Finance. The taxpayer may choose to remain anonymous until a written agreement is complete. The written agreement specifies the steps and payments necessary to satisfy any existing delinquent liability. No refund shall be granted or tax credit allowed, including applicable interest, for amounts paid under this program.

B. Eligibility

A taxpayer may make a voluntary disclosure for one or more tax periods and/or tax types provided that:

- the taxpayer is not currently under audit by DOF
- the taxpayer was not previously contacted by DOF regarding the specific liability
- the taxpayer is not a party to any criminal investigation being conducted by NYS or any political subdivision of NYS
- the liability is not related to a tax avoidance transaction that is a federal or NYS reportable transaction

A taxpayer is eligible even if the reason for the delinquency is the intentional disregard of the tax obligation or fraud.

Even though the taxpayer may want a limit on the number of years to file, the entire delinquent liability for all years, including those taxable years that are not being filed, must be disclosed. This disclosure protects the taxpayer from audit and assessment for earlier years. If the delinquency is the result of mistake, confusion, ignorance of the law, inability to comply, or a similar reason, applicants may qualify for a three-year "look-back." If the tax involved is a trust fund tax, the taxpayer may qualify for a six-year look-back.

The taxpayer must also document the reason for not filing. That reason is subject to review as part of the audit process. Any voluntary disclosure and compliance agreement made between the Department of Finance and a taxpayer will become null and void if the taxpayer makes material misrepresentations or omits facts in the voluntary disclosure request.

C. Initial Contact

A taxpayer may come forward directly or through a representative. The taxpayer has the choice of remaining anonymous. The initial contact should be made in writing to the voluntary disclosure coordinator or electronically through the e-Services webpage.

D. Voluntary Disclosure – Request through Conclusion

Taxpayers participating in the voluntary disclosure and compliance program generally want an advance commitment from the Department of Finance to waive penalties and/or limit the number of years they must comply. DOF requires the taxpayer to make the request for a voluntary disclosure and compliance agreement in writing or electronically and provide certain supporting information.

DOF will ask the taxpayer or the taxpayer's representative to include the following in their request. (Note that when the taxpayer files electronically, and such questions have already been asked, the taxpayer does not need to provide answers below. However, taxpayers are still required to answer the following when they are making a written request.)

- 1) A statement of facts, provided anonymously if necessary, describing the taxpayer's activities in New York City and New York State, including when these activities started, and the number of employees (and their titles) involved in the activities. The statement should indicate the tax year they believe their tax obligation began. (Note: There is no limit in the law as to how many past years DOF may examine for a non-filing entity under the Voluntary Disclosure and Compliance Program. The period is determined by the facts and circumstances. However, some taxpayers may qualify for a limited look-back period.)
- 2) A statement explaining why the taxpayer has failed to file tax returns and pay taxes in the past.
- 3) An estimate of the taxpayer's approximate tax liability on a year-by-year basis for all the delinquent years.
- 4) An affirmation, prepared by either the taxpayer or the representative, that the taxpayer has not previously been contacted by the Department of Finance concerning any potential tax liability for the tax now being disclosed. The taxpayer must not be currently under audit for any city tax, and the taxpayer must understand that all disclosed facts are subject to audit. If it is determined that a material fact has been omitted or misrepresented, the agreement becomes null and void.
- 5) Taxpayers requesting a limited look-back period must provide a statement that explains why the limited look-back is appropriate. Generally, a taxpayer will qualify for the three-year look-back if the delinquency was caused by mistake, confusion, ignorance of the law, or some inability to comply. Most other taxpayers may qualify for a six-year look-back. Taxpayers will not qualify for the limited look-back if any of the following apply:
 - a) the taxpayer was a New York City tax filer in the past and had stopped filing NYC returns;
 - b) the taxpayer has no current obligation to file NYC tax returns; or
 - c) the delinquent obligation occurred as a result of changes made by the Internal Revenue Service or by New York State.

Taxpayers who do not qualify for the limited look-back period may still receive an agreement covering a longer period.

6) Other information or data deemed appropriate. Once the process is complete and DOF determines that the conditions for a voluntary disclosure and compliance agreement are satisfied, our representative and the taxpayer can discuss terms for a written voluntary disclosure and compliance agreement. The agreement must include the following elements or terms:

- a. A summary of the facts and representations.
- b. Disposition of penalties.
- c. The period or periods for which returns must be filed and the period or periods that DOF will not audit the taxpayer or assess amounts due.
- d. A statement that all returns and representations are subject to audit. Any material omission or misrepresentation may result in rescinding 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 the agreement, on a timely basis.

All voluntary disclosure and compliance agreements must be reviewed and approved by the voluntary disclosure coordinator. An authorized employee must sign the agreement for the Department of Finance.

7) IV. UNIFIED PROGRAM

Taxpayers who are delinquent for both city and state taxes may participate in the Unified Program. This program allows a taxpayer to make one request to participate in both the NYC and NYS VDCPs without making separate requests to each jurisdiction. Taxpayers are still required to identify themselves on their application. The taxpayer receives separate agreements from each jurisdiction detailing the terms of each jurisdiction. An authorized employee from each jurisdiction will sign the agreement.

All requests to participate in the Unified Program must be made to NYS.