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STATEMENT OF AUDIT PROCEDURE

VOLUNTARY DISCLOSURE

I. BACKGROUND

It is the practice of the New York City Department of Finance ("Finance") to encourage all taxpayers to meet their obligation to file City tax returns and pay all taxes due. Sometimes taxpayers fail to meet these obligations on a timely basis. Like most tax administration agencies, Finance 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 obligations on a timely basis, Finance has determined that establishing procedures that encourage delinquent taxpayers to come forward will enhance overall compliance. These procedures deliberately do not give taxpayers who intentionally fail to comply an avenue to avoid civil or criminal sanctions.

The reasons and circumstances for delinquency vary widely and Finance has not established a single set of terms for voluntary disclosure cases. However, we have established general procedures for auditors to follow in bringing taxpayers into full compliance. Some taxpayers may qualify for a three-year look-back period.

II. SCOPE

This Statement of Audit procedure ("SAP") provides general guidance to Finance staff on how to handle voluntary disclosures in order to ensure that all voluntary disclosures 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 that 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 the SAP.

III. PROCEDURE

A. What is 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 and/or a limit on the number of years for which the taxpayer must comply. The taxpayer or its representative may make the initial contact with the identity of the taxpayer being disclosed at the time of contact or remaining anonymous until the written agreement is finalized. The written agreement specifies the steps and payments necessary to satisfy any existing delinquent liability.

B. Eligibility

A taxpayer may make a voluntary disclosure for one or more tax periods and/or tax types provided the reason for the delinquency is not due to intentional disregard of the tax obligations or to fraud.

Even though the taxpayer may be seeking a limit on the number of years to file, the entire delinquent liability must be disclosed. The agreement will then protect the taxpayer from audit and assessment for the disclosed years prior to the look-back period. The New York State Department of Taxation and Finance has provided that when the delinquency was a result of mistake, confusion, ignorance of the law, inability to comply, or a similar reason, applicants may qualify for a three-year look-back unless the tax involved is a trust fund tax. Finance will use similar criteria.

The taxpayer must also document the reason for the delinquency. That reason is subject to review as part of the audit process. Any voluntary disclosure agreement made between Finance and a taxpayer will become null and void if there is a final determination that there were misrepresentations or that material facts were omitted in the request.

C. Initial Contact

A taxpayer may come forward directly or through a representative on an anonymous basis. The initial contact can be made by telephone or in writing and should be made to the Voluntary Disclosure Coordinator.

D. Voluntary Disclosure – Request through Conclusion

A taxpayer making a voluntary disclosure is generally seeking an advance written commitment from Finance that Finance will waive penalties and/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 supporting information.

Finance will ask the taxpayer or the taxpayer's representative to include the following in the written request:

- 1) A statement of facts, anonymously if necessary, describing the taxpayer's activities in New York City and New York State, when these activities commenced, 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 Finance may examine for a non-filing entity under a voluntary disclosure. The period is determined by the facts and circumstances. However, some taxpayers may qualify for a three-year look-back period.)

- 2) A statement explaining why the taxpayer has failed to file tax returns and pay taxes in the past. Penalties may only be waived for reasonable cause.
- 3) A computation of the taxpayer's approximate tax liability on a year-by-year basis for all the delinquent years.
- 4) An affirmation by the taxpayer that they have not been previously contacted by Finance 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.
- 5) For taxpayers requesting a three-year look-back period, a statement that explains why the limited look-back is appropriate. Generally, a taxpayer will qualify for the three-year look-back if delinquency was caused by mistake, confusion, ignorance of the law, or some inability to comply. Taxpayers will not qualify for the three-year look-back if any of the following apply:
 - a) the taxpayer was a NYC filer in the past and had stopped filing NYC returns;
 - b) the taxpayer has no current obligation to file NYC tax returns;
 - c) the delinquent obligation occurred as a result of changes made by the Internal Revenue Service or by New York State; or
 - d) the delinquent obligation involved either NYC Utility taxes or NYC Hotel Occupancy taxes that were collected on behalf of the City.

Taxpayers that do not qualify for the three-year look-back period may still receive an agreement covering a longer period.

- 6) Other information or data deemed appropriate.

Once the fact gathering is complete and Finance determines that the conditions for a voluntary disclosure agreement are satisfied, the Finance 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.
- c) Years covered.
- d) A statement that all returns and covered periods are subject to audit. Any material omission or misrepresentation is grounds for rescission 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 the agreement on a timely basis.

All voluntary disclosure agreements must be reviewed and approved by the Coordinator. A duly authorized Finance employee must sign the agreement for Finance.