Time for Spring Cleaning:

Using Sales Tax Voluntary Disclosure Agreements, Voluntary Disclosure Statutes, Amnesties and the Audit Lottery to Minimize and Resolve Outstanding Liabilities and Potential Exposure
Panel

Brian Goldstein
Partner, PwC

Lynn Gandhi
Partner, Honigman Miller Schwartz and Cohn LLP

Thomas Shimkin
Former Director, National Nexus Program Multistate Tax Commission
Agenda

Remediation Options

- What does it all mean?!
- Amnesty
- Voluntary Disclosure
- Managing within sales and use taxes
- Resolution of liabilities; Options
- Trends and best practices
- The Role of the Multistate Tax Commission
- Points of interest
- Maximizing VDA opportunities
“Who Me?”

When a company realizes they have nexus... then a filing obligation... and has been doing business in that state... for a while

What if I:

• Am a reseller or wholesaler, but have nexus?
• Had taxable sales for several years but no longer operate in that jurisdiction?
• Have material sales in the current period, but my historical liability is not material?
• What if I have collected tax from my customers but not remitted to the state?
• Have an office/employee in the state, may not have taxable sales but may have a use tax obligation, do they still need to do a VDA or do they register and file prospectively?

What options do I have?
Nexus: What if I don’t have physical presence?

Other ways of creating a filing obligation that you might not have thought about!

Remote Sellers

Click-through & Affiliate Nexus

Economic Nexus

OK, I have nexus... now what?
The “Options”

Monitor & Reserve
- When is this appropriate?

VDA vs. Amnesty vs. Audit Lottery
- Advantages/Disadvantages

Informal VDA
- Is this a real thing?

Making a Business Decision
- Materiality
- Reserves
- Catch-up returns
Amnesty: Overview

Tax Amnesty is a limited-time opportunity for a specified group of taxpayers to pay a defined amount, in exchange for forgiveness of a tax liability (including interest and penalties) related to a previous tax period(s), without fear of criminal prosecution.

Amnesty programs are “political creatures” – created to fill budgetary needs

Programs change annually and differ by jurisdiction
## Amnesty: Past Amnesty Programs

<table>
<thead>
<tr>
<th>State</th>
<th>Percentage of penalty/interest waived</th>
<th>Amnesty Program Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>100%/100%</td>
<td>9/1/2015 – 10/31/2015</td>
</tr>
<tr>
<td>Indiana</td>
<td>100%/100%</td>
<td>9/15/2015 – 11/16/2015</td>
</tr>
<tr>
<td>Kansas</td>
<td>100%/100%</td>
<td>9/1/2015 – 10/15/2015</td>
</tr>
<tr>
<td>Louisiana</td>
<td>33%/17%</td>
<td>TBD - Effective for a period of at least one month in 2015, occurring between 7/1/2015 and 12/31/2015. Period determined at the discretion of the secretary</td>
</tr>
<tr>
<td>Maryland</td>
<td>100%/50%</td>
<td>9/1/2015 – 10/30/2015</td>
</tr>
<tr>
<td>Missouri</td>
<td>100%/100%</td>
<td>9/1/2015 – 11/30/2015</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>100%/100%</td>
<td>9/14/2015 – 11/13/2015</td>
</tr>
<tr>
<td>South Carolina</td>
<td>TBD/TBD</td>
<td>TBD - Department must notify Legislature of dates at least 60 days prior to start of program</td>
</tr>
</tbody>
</table>
Voluntary Disclosure: Background

What is it?

• A program whereby taxpayers proactively disclose prior period tax liabilities in accordance with a binding agreement.

• Many states offer Voluntary Disclosure Agreements to encourage companies to comply with a state’s tax laws. Other states have statutory authority, rather than a specific document.

• Jurisdictions will often offer certain benefits (e.g., waiver of penalty, limited look back period) as an incentive to companies in exchange for coming forward willingly (versus detected under audit).
Voluntary Disclosure: Does Every State Offer One?

Fun facts on VDA

• 43 states offer VDA program*
• 35 states allow permitted schedule instead of return*

Named VDA vs. Anonymous VDA

Highlight of states’ VDA programs

<table>
<thead>
<tr>
<th>State</th>
<th>VDA Permitted</th>
<th>Named VDA vs. Anonymous</th>
<th>Look-back Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>Yes</td>
<td>Anonymous</td>
<td>3 years</td>
</tr>
<tr>
<td>Florida</td>
<td>Yes</td>
<td>Anonymous</td>
<td>3 years</td>
</tr>
<tr>
<td>Illinois</td>
<td>Yes</td>
<td>Disclose</td>
<td>4 years</td>
</tr>
<tr>
<td>Indiana</td>
<td>Yes</td>
<td>Anonymous</td>
<td>3 years</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Yes</td>
<td>Anonymous</td>
<td>3 years</td>
</tr>
<tr>
<td>New York</td>
<td>Yes</td>
<td>Disclose</td>
<td>3 years</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Yes</td>
<td>Anonymous</td>
<td>3 years from December 31 of last year, plus current year</td>
</tr>
<tr>
<td>Washington</td>
<td>Yes</td>
<td>Anonymous</td>
<td>4 years, plus current year</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Yes</td>
<td>Anonymous</td>
<td>4 years</td>
</tr>
</tbody>
</table>

* Data obtained from PwC S&U Tax VDA Toolkit
Voluntary Disclosure: How Does it Work?

Setting client expectations...

Eligibility

Qualifying taxpayers who recently became aware of outstanding tax liabilities (for sales and use tax) will only be responsible for satisfying outstanding tax liabilities for the lookback period of the jurisdiction (variable).

Needed

- The type(s) of tax due;
- The date(s) the taxpayer’s tax liabilities began;
- A detailed description of the taxpayer’s activities in the particular jurisdiction;
- An explanation of the taxpayer’s failure to file and pay past-due taxes;
- Verification that the taxpayer has not been previously contacted by the department regarding the tax liability; and
- Complete applicable documentation provided by the jurisdiction (e.g., Questionnaire).

Execution

Taxpayers will receive 2 copies of a proposed VDA for signature in most cases.

Both copies must be signed by the taxpayer or an authorized representative and returned to the Department within a stated period of time.

Once the documents are approved and signed by the Department of Revenue and, if required, the Auditor General, one copy will be returned to the taxpayer along with instructions for filing returns and remitting payment.
Voluntary Disclosure: Getting into the details

**Standard terms**
- Interest
- Penalties
- Lookback periods

**Required detail**
- Amended returns vs. schedules
- Estimates
- Individual transactions
Voluntary Disclosure: Managing Multiple Tax Types

Our experience:

“\textbf{Normally} we indicate in the VDA request that the taxpayer is compliant for all taxes except sales tax. \textbf{However}, we have had auditors question and separately verify if the taxpayer is in compliance for income tax or other taxes. This sometimes leads to working with the state on VDAs for additional tax types”

\begin{itemize}
  \item \textbf{Washington} \\
      Business & occupation tax and sales tax
  \item \textbf{Louisiana} \\
      Franchise tax and sales tax
  \item \textbf{City of Denver} \\
      Require Occupational Privilege Tax to be reported for any employee in the City and County of Denver
  \item \textbf{Pennsylvania} \\
      Franchise tax and sales tax (the franchise tax itself is set to be eliminated by early 2016)
  \item \textbf{Hawaii} \\
      General Excise and use tax
  \item \textbf{New Mexico} \\
      Gross receipts tax and withholding tax
\end{itemize}
Voluntary Disclosure: Inquiring Minds Want to Know

Is a registered taxpayer precluded from entering into a VDA if a liability is found? If so, what are some other options for registered taxpayers?

How common is it for a VDA to be audited?/Frequency of audit?

If a client later determines they overpaid tax as part of their VDA, can a refund for the VDA be filed?

Can you resolve technical issues through the VDA process?

Can you negotiate terms?

How to receive VDA as a registered entity

**New York**

- You’re not currently under audit by the New York State Tax Department,
- You haven’t received a bill for the tax debts you’re disclosing,
- You’re not under criminal investigation by a New York State agency or a political subdivision of the state, and
- You’re not disclosing participation in certain tax avoidance transactions (commonly known as a tax shelter).

**New Jersey**

- Taxpayer must not be under any criminal investigation
- No previous contact with the Taxpayer by the Division or any of its Agents;
- Taxpayer is not registered for the taxes they wish to come forward on;
- Taxpayer is not currently under any criminal investigation.
- Taxpayer must be willing to pay outstanding tax liabilities and file the prior year returns within a reasonable period.
Another Piece of the Puzzle: Local Jurisdictions

- Alabama Locals
- Colorado Locals
- Louisiana Parishes
- Arizona “Non Program Cities”
Voluntary Disclosure: Multistate Tax Commission (MTC)

What is it? The Multistate Tax Commission is an intergovernmental state tax agency working on behalf of states and taxpayers to administer, equitably and efficiently, tax laws that apply to multistate enterprises.

When was it created? The commission was created by the Multistate Tax Compact in 1967.

What is it trying to accomplish? The commission was created as an effort by states to protect their tax authority in the face of previous proposals to transfer the writing of key features of state tax laws from the state legislature. For that reason, the Commission has been a voice for preserving the authority of states to determine their own tax policy within the limits of the U.S. Constitution.
Voluntary Disclosure: MTC States

Member states

Alabama
Alaska
Arkansas
Colorado
District of Columbia
Hawaii
Idaho
Kansas
Missouri
Montana
New Mexico
North Dakota
Oregon
Texas
Utah
Washington

Compact members are states (represented by the heads of the tax agencies administering corporate income and sales and use taxes) that have enacted the Multistate Tax Compact into their state law. These states govern the Commission and participate in a wide range of projects and programs.

Sovereignty members are states that support the purposes of the Multistate Tax Compact through regular participation in, and financial support for, the general activities of the Commission. These states join in shaping and supporting the Commission’s efforts to preserve state taxing authority and improve state tax policy and administration.

Associate members are states that participate in Commission meetings and otherwise consult and cooperate with the Commission and its other member states or, as project members, participate in Commission programs or projects.
Voluntary Disclosure: “I’m Not Ready”

What if I...

Don’t know when my business started

Have bad data

Am not ready to collect and remit
Voluntary Disclosure: The Good, The Bad, The Ugly

Timing

- Longer than normal wait times at all stages have been noted in most jurisdictions due to staffing issues at the state level and volume of audits and voluntary disclosures
- States offering to shorten timeline if company’s willing to disclose

Where are we seeing the most aggressive positions/issues being accepted?
### Voluntary Disclosure: Points of Interest

**Aggressive jurisdictions**

<table>
<thead>
<tr>
<th>Washington</th>
<th>Texas</th>
<th>New York</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>Hawaii</td>
<td>City of Denver</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>LA Parishes</td>
<td>Louisiana</td>
</tr>
</tbody>
</table>

---

2016 ABA/IPT Advanced Sales and Use Tax Seminar
Voluntary Disclosure: Points of Interest

Aggregable Jurisdictions

Maine  Michigan  Ohio
Minnesota  Arkansas
Nebraska  North Carolina  Vermont
Voluntary Disclosure: Maximizing the Opportunity

New Jersey reduces sales tax interest rate from 14.5% to 8%

Washington treats VDA more like an audit

New Mexico does not have the VDA program but accepts application for its managed audit program through the MTC

Many states are experiencing longer than average wait times between acceptance into their program and confirmation of final interest calculation
Voluntary Disclosure: Maximizing the Opportunity

Review of taxability determinations

Sourcing studies

Process improvement

Compliance assistance

Reserve calculations/monitoring

Technology implementations
Thank you