

## **VOLUNTARY DISCLOSURE AGREEMENT (VDA)**

### **Description of Program**

The Oklahoma Voluntary Disclosure Agreement Program (VDA Program) is designed to promote state tax compliance and to benefit taxpayers who discover a past filing obligation and/or liability that has not been discharged. Only taxpayers that have not registered, filed, or remitted tax to the Oklahoma Tax Commission (OTC) are eligible for the VDA Program. The VDA Program applies to any tax administered by the OTC and to any type of domestic or foreign taxpayer that is subject to tax in this State.

Taxpayers that have filed returns but underreported or under-remitted the tax due are not eligible for the VDA Program. In addition, Taxpayers that have applied for a tax account prior to the VDA Program request, or those who have previously had a tax account with the OTC, are not eligible for the VDA Program.

A major component of the VDA Program is to resolve sales and use, withholding, corporate income, and franchise tax liabilities when nexus is the central issue.

Eligibility for the VDA Program is reviewed on a tax-by-tax basis. For example, if a taxpayer has filed a return, paid, or been contacted for one tax type, it will not preclude the taxpayer from entering the VDA Program for other tax types.

### **I. Qualifying for Voluntary Disclosure**

To qualify for the VDA program, a taxpayer must meet all of the following criteria:

- The taxpayer has not been contacted by the OTC, an agent of the OTC, or the Internal Revenue Service with respect to any tax for which the taxpayer is requesting a VDA.
- The taxpayer has not filed a return, had an account, or applied for an account for the specific tax type.
- The taxpayer does not have outstanding tax liabilities other than those reported through the VDA Program.
- The taxpayer is not under audit by the OTC.
- The taxpayer pays the tax due under the VDA Program within ninety (90) days of the date the OTC signs the VDA.

- Upon request, the taxpayer makes records available for the OTC to verify the amount of the taxpayer's liability and the accuracy of the representations made by the taxpayer.
- The taxpayer cannot have previously entered into a VDA with the OTC.
- The taxpayer must note on its application for the VDA Program whether the tax was collected and, if it was, the dates that the tax was collected.

## II. Benefits of Voluntary Disclosure

A taxpayer whose application for a VDA is approved will receive:

- A look back period limiting the requirement to file returns and pay tax to three (3) years for taxes filed annually or thirty-six (36) months for taxes that do not have an annual filing frequency. The look-back period will be calculated from the date of the taxpayer's VDA Program application. If the taxpayer has collected taxes from others, such as sales tax, and not reported those taxes for periods beyond three (3) years or thirty-six (36) months, the requirement to file and pay will be extended to cover those periods for which the taxpayer collected the taxes.

Under the VDA Program, the requirement to file returns and pay taxes for three (3) years or thirty-six (36) months refers to returns that are currently past due. To determine the filing requirement for taxes that are filed annually, a taxpayer would file the most recent return ***that is past due***, plus returns for the two (2) previous years. To determine the filing requirement for taxes that do not have an annual filing frequency, a taxpayer would file the most recent return that is past due, plus returns for the previous thirty-five (35) months.

Unregistered taxpayers that do not participate in the VDA Program and are discovered by the OTC are required to file returns and pay taxes for a minimum of six (6) years for taxes filed annually or seventy-two (72) months for taxes that do not have an annual filing frequency.

- On VDAs where tax was not collected by the taxpayer, penalty and one-half (1/2) accrued interest will be waived by operation of law and no further action shall be required by the taxpayer.

- Taxpayers who collected a trust tax, such as sales tax, but did not pay it to the OTC will receive consideration for waiver of only the penalty after all taxes due for the filing period(s) and all taxes collected by the taxpayer have been paid to the OTC.

If the OTC issues an order granting a taxpayer a waiver of penalty in excess of twenty-five thousand dollars (\$25,000), the taxpayer must obtain Oklahoma County District Court approval of the order before the OTC's waiver can be effective. The taxpayer has six (6) months from the date of the OTC order to obtain and submit the district court approval to the OTC. Failure to timely submit the district court approval will nullify and void the OTC's order waiving interest.

- For sales and use tax or withholding tax, the taxpayer shall submit the tax liability in a spreadsheet format versus filing a return for each period included in the VDA.
- The taxpayer will have ninety (90) days from the date the OTC signs the VDA to determine the tax liability, prepare the returns or spreadsheets, and pay the amount of tax due.

### III. **How to Apply**

Beginning December 16, 2019, taxpayers or their representative can anonymously complete the program application for **business taxes** and/or **income tax** by going to [https://oktap.tax.ok.gov/oktap/Web/ /](https://oktap.tax.ok.gov/oktap/Web/) and submitting the Voluntary Disclosure Application online.

### IV. **Review and Approval of Voluntary Disclosure Requests**

The OTC will review each application for the VDA Program. If the information provided on the VDA Program application is sufficient, a blank VDA will be sent to the contact named in the application. The taxpayer will then need to complete, sign, and return the VDA. Once the VDA Program application has been approved by the OTC, the OTC will sign the VDA and send it to the taxpayer or representative of the taxpayer.

The VDA is considered fully executed once it is signed by both parties.

If the OTC determines that the taxpayer does not qualify for the VDA Program, the taxpayer or representative of the taxpayer will be notified.

If the taxpayer or representative makes any misrepresentation of information or applicable tax data to the OTC, the VDA can be voided and the OTC can take action as if the agreement does not exist.

**V. Audits for Voluntary Disclosure Period**

The OTC reserves the right to examine the books and records of the taxpayer for periods prior to registration, solely for the purpose of ascertaining the correctness of representations made by the taxpayer to the OTC.

The OTC will assess any tax determined to be due under the VDA. All applicable penalties and interest will apply to additional taxes discovered to be due that have not been paid.

A taxpayer contacted by the OTC for the purpose of examination after an application for the VDA Program has been submitted, but prior to the signing of a VDA by the OTC, may disclose the same to suspend audit activity pending acceptance into the VDA Program.

**VI. Confidentiality**

The OTC will not release the identity of a taxpayer that enters into a VDA, or the terms of the VDA, unless the information is required to be released upon request under the provisions of Title 68 Section 205 or existing information exchange agreements.

**VII. Any Questions?**

Please contact the Audit Services Division at [Voluntary\\_Compliance@tax.ok.gov](mailto:Voluntary_Compliance@tax.ok.gov).