

Washington temporarily expands eligibility for voluntary disclosure program

Overview

Effective July 15, 2020 through November 30, 2020, the Washington State Department of Revenue (Department) is temporarily expanding the eligibility criteria for the voluntary disclosure program.

The new criteria allow the following businesses to qualify for the voluntary disclosure program:

- Businesses that closed their tax registration prior to January 1, 2020
- Businesses that were placed on Active Non-Reporting status prior to January 1, 2020
- Businesses whose most recent enforcement contact was prior to July 1, 2019
- Businesses who have not been named as an affiliate of another business through an enforcement contact

This alert summarizes the new eligibility criteria and the benefits of the voluntary disclosure program.

Voluntary Disclosure Program Eligibility Criteria

Prior to the expansion of the voluntary disclosure program, a business would have been ineligible from the program if it had registered with or reported taxes to the Department, had previously been contacted by the Department for enforcement purposes, an affiliate entity was contacted by the Department for enforcement purposes, or had engaged in evasion or misrepresentation in reporting tax liabilities.¹ Effective July 15, 2020 through November 30, 2020, the Department is temporarily expanding its eligibility criteria to the following businesses:²

- Businesses that closed their tax registration prior to January 1, 2020, including businesses that have previously filed tax returns.
- Businesses that were placed on Active Non-Reporting status³ prior to January 1, 2020.
- Businesses whose most recent enforcement contact⁴ was prior to July 1, 2019. Enforcement contact made on or after July 1, 2019 would disqualify the business from receiving voluntary disclosure benefits. During a limited period, the Department reached out to remote businesses to enforce the new economic nexus standards and filing obligations. As such, businesses that have been contacted at any time by the Department regarding the revised nexus standards following the *Wayfair* decision, the Marketplace Fairness Act, or remote seller relief program do not qualify for the voluntary disclosure program.
- Businesses who have not been named as an affiliate of another business through an enforcement contact. "Named affiliates" means affiliates addressed specifically by name, either by the Department through enforcement contact or by the particular business in a response to enforcement contact by the Department. For example, a business that was not identified as an affiliate of a taxpayer going under audit or any other enforcement procedure may qualify for the voluntary disclosure program.

The expansion of the voluntary disclosure program does not apply to collected but unremitted retail sales tax. There is an unlimited lookback period and a 29% late payment penalty for collected and unremitted retail sales taxes. However, business and occupation tax liability may qualify for the voluntary disclosure treatment.

¹ Information on the voluntary disclosure program is accessible [here](#).

² Information on the expanded eligibility criteria is accessible [here](#).

³ An active non-reporting status is generally for taxpayers who are considered to be actively doing business in Washington but are not required to file tax returns.

⁴ An "enforcement contact" includes but is not limited to a phone call or written correspondence inquiring about a business' registration status, a request to complete the Washington Business Activities Questionnaire, or a notification of audit or examination.

All requests for the voluntary disclosure must be submitted by November 30, 2020, through the Department's online application.⁵ Any applications received after this date will be reviewed by the traditional voluntary disclosure program criteria. An application can be submitted anonymously, but businesses must disclose their identity within 15 calendar days of the application date. To work with a third-party representative, a completed confidential tax information authorization form must be provided at the time of disclosure.

Considerations

Businesses that were ineligible for the voluntary disclosure program should check to see if they're eligible under the expanded criteria. The voluntary disclosure program applies to excise taxes and retail sales taxes, not property taxes. Also, the voluntary disclosure program offers the following benefits:⁶

- A limited look back period of four years plus the current year
- A waiver of penalties, which include:
 - 5% assessment penalty for substantially underpaid tax;
 - 5% unregistered penalty; and
 - 29% late payment of a return penalty

Contacts

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⁵ The online application is accessible [here](#).

⁶ Businesses are still responsible for the interest on the tax.