

DISCUSSION TOPICS
Franchise Tax Board Interested Parties Meeting
Revenue and Taxation Code Section 19191 Et. Seq.
Voluntary Disclosure Program

April 1, 2009

A. STAFF'S EXPECTATIONS FOR THE MEETINGS

FTB staff believes that within the existing statutory framework there is room for additional process efficiencies. The FTB will host open discussions to address these and other concerns that may be presented by the public regarding the VDP. Interested parties should be prepared to discuss possible approaches to addressing the issues outlined below and any other issues brought up in the discussions, keeping in mind that the underlying objective is to streamline the process to make it more taxpayer-friendly and efficient.

B. BACKGROUND

Section 19191 authorizes the Franchise Tax Board (FTB) to enter into voluntary disclosure agreements with qualified taxpayers. This program was enacted by the Legislature in an effort to allow taxpayers who acknowledge a California filing obligation, but who have not previously filed returns based on either a past good faith belief that its activities were immune from taxation, or reasonable reliance on professional advice, to come forward and voluntarily pay tax and interest for specified years without the imposition of specified penalties. The State benefits from voluntary compliance and payments by taxpayers, and taxpayers benefit by being relieved of potential penalties based on their failure to file appropriate tax returns if they come forward on their own volition.

Staff intends to hold a meeting to identify both what the department is doing well and what might be improved upon in voluntary disclosure program (VDP) administration. The issues identified by staff below are intended to promote discussion on topics that may be addressed at the meeting. Staff invites members of the public to raise for discussion any other issues respecting the VDP that they may deem appropriate though this meeting will not focus discussion on possible statutory changes.

B. ISSUES IDENTIFIED BY STAFF

1. [Application process](#) improvements

Prospective applicants must currently provide sufficient information to staff to allow a recommendation decision to be made to the three-member FTB for approval. Under current procedures staff may send out letters to applicants confirming receipt of the VDP applications, and when necessary, request additional information to be provided by applicants telephonically, via email or via facsimile. Suggestions for improvement in this process are desired in the following areas:

- a. Speed of review: Do practitioners sense that the review process is too lengthy, or that there are unnecessary steps required? What might allow staff to reduce time spent asking for additional information or making clarifications or providing tips to practitioners on the VDP process? What part of the process appears to be working smoothly?
- b. Statutory Clarity: Are there any aspects of the statutory scheme which confuse practitioners (i.e., what makes for a "qualified entity") and if so, what would help alleviate some of the confusion?
- c. Exposure issues: What can staff do to help practitioners identify potential exposure issues for multi-tiered applicant related entities, such that a decision whether to include additional applicants for voluntary disclosure relief could be made earlier in the process?

2. Application ([FTB Form 4925](#)) revisions to improve efficiency

FTB Form 4925 provides applicants with brief background information on VDP and instructions on how to complete the form. The form itself – beginning on page three - is divided into five parts which ask for various data items.

- a. Modifications: Staff desires suggestions from the representative community on how to simplify the process of providing information necessary for FTB to make an approval recommendation. Specifically, staff is interested to hear suggestions on methods to allow representatives to clarify desired applicants (including member/owners, shareholders, subsidiaries, etc.), years in which the taxpayer had nexus, information on business activity (global and California sales, property and payroll amounts). Staff is interested to hear if representatives would be willing to provide standardized charts and tables for this type of information if FTB provided a template.

Organizational Structure: Should staff require applicants to include an exhibit showing the organizational structure in the case of applicants with more than two tiers?

3. Comparable experiences with VDP administration at other government entities

Staff is interested to hear from practitioners about their experiences bringing VDP applications forward in other states and through the Multistate Tax Commission (MTC). While California's VDP processes is governed by California Revenue and Taxation Code section 19191 et seq. there may be efficiencies and process suggestions derived from practice with other state taxation agencies useful for staff to consider:

- a. Multiple entities: Where a practitioner represents more than one related entity desiring to come into VDP, are there several applications to fill out, or one application covering all entities?

- b. Speed of processing: What is the turnaround time in other states generally between application and approval? Are there technology or process methods employed elsewhere which speed handling that FTB should consider?
- c. Anonymity: California statute requires FTB to provide a mechanism for applicants to apply for VDP relief anonymously, but do representatives feel using this mechanism creates additional complexities? Do representatives want to continue the practice of bringing in applicants without anonymity if they desire? How is anonymity handled in other states and with the MTC?

4. Communication improvement suggestions

FTB is looking for ways to improve its public outreach and to assist prospective applicants in obtaining the information necessary to make an informed decision about whether to apply to California's VDP. Staff desires feedback about the successes and failures of each method of communication:

- a. Website: What organizational or content improvements would help practitioners to more easily find guidance on how to apply for VDP? Would the ability to have an interactive web-based system be desirable? Is the current website easy to navigate and if not what could be improved?
- b. Publication 1071: Publication 1071 currently is almost identical in content to Form 4925. Do practitioners turn to this publication for guidance on how to apply for our VDP program?
- c. Frequently Asked Questions (FAQ): Would a new publication or online FAQ identifying common questions and caveats about the VDP be helpful to the practitioner community?