

MULTISTATE SURVEY OF VOLUNTARY DISCLOSURE PROGRAMS: HOW THE STATE OF CALIFORNIA SHOULD PROCEED

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I. INTRODUCTION

This Article is a survey of state voluntary disclosure programs. Part I focuses on who is currently eligible and whether prior programs and conformity with the IRS's Offshore Voluntary Disclosure Programs and Initiatives ("OVDP"). In Part II, we discuss potential problems taxpayers and practitioners have in states like California where there either is a non-conforming voluntary disclosure program or no voluntary disclosure program at all. In Part III, we provide a categorical overview of state voluntary disclosure program ("VDP") models under their current systems. This article focuses on a few states per model to outline their apparent advantages and disadvantages. Part IV concludes with recommendations for the state of California and how it can accommodate conformity and raise revenue through a new voluntary disclosure program. The Appendix includes a chart summarizing state voluntary disclosure programs.

II. THE PROBLEM

U.S. citizens who have foreign financial accounts are required to report them to the IRS every year by filing FinCEN Form 114, Report of Foreign Bank and Financial Accounts ("FBAR"). The failure to timely file an FBAR

¹ The author gratefully acknowledges the contribution of intern and law student Sev Kechichian.

may result in severe civil and criminal penalties under the Bank Secrecy Act. Taxpayers who fail to accurately report income from foreign financial accounts may face equally significant penalties under the Internal Revenue Code. The IRS has given taxpayers an opportunity to come forward, disclose unreported foreign financial accounts and report income on those accounts by enacting a series of offshore voluntary disclosure programs (2009, 2011 and 2012). The voluntary disclosure programs h allow taxpayers with foreign financial accounts who failed to timely file an FBAR to disclose the information to the IRS. The most recent programs , the OVDP of 2014 and the Streamline Resident and Non-Resident Procedures have no parallel in California (collectively the “voluntary disclosure programs”).

By implementing voluntary disclosure programs at the state level the cover at least the same tax issues as the voluntary disclosure practitioners and taxpayer’s alike to give an incentive to taxpayers to voluntarily come forward under state law at the same time as they do under the federal programs.

California currently limits their voluntary disclosure program (VDP) to qualified entities, qualified shareholders, or beneficiaries that have incurred an unpaid California tax liability or an unfulfilled filing requirement to disclose their liability voluntarily.² The last VDP that was offered to individuals and that complimented the IRS’s OVDP was the Voluntary Compliance Initiative 2 (VCI2). VCI2 raised approximately \$350 million by allowing California taxpayers to voluntarily disclose previously underreported income tax liabilities through the use of abusive tax avoidance transactions or offshore financial arrangements.³ Unfortunately, VCI2 expired in October 31, 2011 and the state of California has not implemented a

² The Voluntary Disclosure Program is a statutory program under R&TC Section 19191.

³ “Tax Board Reports Results from Compliance Initiative.” November 17, 2011. https://www.ftb.ca.gov/aboutFTB/Press/2011/Release_47.shtml

new program that is available to individuals after the IRS's ongoing 2012 OVDP. Some regulators assert that only the legislature can authorize a new VDP, but whether this is a legislative or regulatory rule making proposition, the need for California to adopt a new VDP is certain.

The lack of having a program that compliments or conforms to the IRS's ongoing voluntary disclosure programs creates a level of uncertainty for practitioners and taxpayers in California. State authorities and the IRS have an information sharing program, which puts taxpayers at risk of state level criminal prosecution or civil penalties when taking advantage of the IRS's voluntary disclosure programs. For taxpayers who choose one of the voluntary disclosure programs, the only California option is to file amended returns with the state without any assurance of protection from criminal prosecution or civil relief by waiver of certain penalties. The Franchise Tax Board ("FTB") is bound by statute to impose penalties under R&TC Section 19131 (Failure to make and file a return) and Section 19132 (Failure to pay any amount due by the date prescribed for payment). These penalties can only be waived if the taxpayer is able to show reasonable cause and not willful neglect. The filing of an OVDP is not based upon reasonable cause, it is premised on disclosure. Reasonable cause is only an issue in the Streamline Procedures, which deal with the taxpayer's "intent". Without state conformity, taxpayers may be discouraged from coming forward to the state on a concurrent basis.

This problem will keep growing due to the Foreign Account Tax Compliance Act of 2010 (FATCA). FATCA places increased pressure on taxpayers to voluntarily come forward because it requires participating foreign financial institutions to disclose information about U.S. taxpayer account holders to the IRS. As a result more California taxpayers may find it necessary to come forward and enter one of the IRS voluntary disclosure programs. California needs to take action as soon as possible to encourage

non-compliant California taxpayer to come forward at the same time as they enter IRS voluntary disclosure programs.

There are important advantages that California can obtain from a new VDP. Having a VDP that conforms to the IRS voluntary disclosure program may generate additional revenue for the state, well in excess of its costs of implementation..

III. STATE LEVEL VDP MODELS

State level voluntary disclosure programs can generally be described within the following categories: (1) full conformity models; (2) moderate conformity models; (3) moderately limited conformity models; (4) limited conformity models; (5) no conformity models.

A. Full Compliance Models

States using a full compliance model have a current VDP that includes individuals and have prior programs that ran the same year as the IRS OVDP. There are a total of ten states that use this model: Arizona, Connecticut, Louisiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, Rhode Island and Vermont. Most of these states have been very successful in collecting revenue for their state. Having an ongoing VDP that includes individuals and having tax amnesty programs that run the same year as the OVDP provides the taxpayer multiple ways to voluntarily come forward and avoid criminal prosecution and civil penalties. When both of these elements are present, there is a perception among taxpayers that the federal and state governments are fully cooperating and this allows taxpayers to come forward without hesitating about whether disclosing federally will create state level problems. The results in a few exemplary states are compelling.

The state of Connecticut has an ongoing voluntary VDP that is available to businesses and individuals who are not in compliance with state

tax laws.⁴ The Department of Revenue Services considers the following criteria: nature and magnitude of such presence and activity and circumstances by which nexus may have been established; demonstration of taxpayer exercising reasonable care to determine that such activities and presence were or were not immune to taxation; evidence that taxpayer's noncompliance was not in willful disregard of the tax laws; demonstration of good faith by the taxpayer; benefits to the state by entering into a voluntary disclosure agreement with the taxpayer; and whether the taxpayer has collected any taxes.⁵ The state of Connecticut has implemented a total of five tax amnesty programs since 1990 (See chart in Appendix). The two most recent ones ran the same years as the IRS's OVDP and covered all state taxes. The tax amnesty program in 2009 generated \$40 million in revenue and the next one in 2013 generated \$193.5 million.⁶ The 2013 tax amnesty program was the most successful one for the state and was the first program available after the 2012 ongoing OVDP was implemented.

The state of Louisiana has an ongoing VDP that is available to any taxpayer who has a filing requirement for a tax administered by the Louisiana Department of Revenue, is not currently registered with the Department of Revenue for the same tax, and has not been previously contacted by the Department of Revenue concerning their filing requirement.⁷ The program covers individual income taxes, sales and use taxes, corporate income & franchise taxes, severance taxes and excise taxes.⁸ The state of Louisiana has implemented a total of seven tax amnesty programs since 1985 (See chart in Appendix). The two most recent programs

⁴ "DRS: Voluntary Disclosure."

<http://www.ct.gov/Drs/cwp/view.asp?a=1430&q=265826>

⁵ Id.

⁶ "State Amnesty Programs – 1982 to Present." September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁷ "Voluntary Disclosure Agreement." July 1, 2011.

<http://revenue.louisiana.gov/forms/misc/FAQ.pdf>

⁸ Id.

ran the same years as the IRS's OVDP and covered all state taxes. The Connecticut tax amnesty program in 2009 generated \$303.7 million and the following one in 2013 generated \$435 million.⁹ Similarly to the state of Connecticut, the 2013 tax amnesty program was the most successful one for the state. Therefore, the state decided to have an upcoming tax amnesty program that will run from October 15 to November 14, 2014.¹⁰ The state of Louisiana is one of three progressive states that are running tax amnesty programs in 2014.

The state of Massachusetts has an ongoing VDP that is available to businesses and individuals.¹¹ There are only a few criteria that the taxpayer must meet to be eligible: taxpayer has had no previous contact by the Department of Revenue relating to the issues of the voluntary disclosure; taxpayer is not registered for the tax type involved in the disclosure; the tax has not been collected.¹² The state of Massachusetts has implemented a total of five tax amnesty programs since 1983 (See chart in Appendix). The two first programs (1983-84 and 2002) generated more revenue than the two following programs (2003 and 2010). However, the state decided to implement a tax amnesty program during the months of September and October in 2014.¹³ The 2014 tax amnesty program will be the first program that will run the same year as the IRS's OVDP. The state of Massachusetts is another one of the three progressive states that are running tax amnesty programs in 2014. State officials and tax practitioners around the country should follow up with the outcome and results of the program.

⁹ "State Amnesty Programs – 1982 to Present." September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹⁰ "Current/Upcoming Amnesties." September 2014.

http://www.taxadmin.org/fta/rate/current_amnesty.html

¹¹ "Voluntary Disclosure Program."

<http://www.mass.gov/dor/tax-professionals/filing-and-reporting/voluntary-disclosure.html>

¹² Id.

¹³ "Current/Upcoming Amnesties." September 2014.

http://www.taxadmin.org/fta/rate/current_amnesty.html

The state of New Jersey has two different ongoing programs and is the only state to use this system as an advantage. The first one is a general VDP with general guidelines to follow: no previous contact with the taxpayer by the Division of Taxation of any of its agents; taxpayer is not registered for the taxes they wish to come forward on; taxpayer is not currently under criminal investigation; taxpayer must be willing to pay outstanding tax liabilities and file the prior year returns within a reasonable period.¹⁴ The second one is a specific “Offshore Voluntary Compliance Initiative”, which complements the IRS’s OVDP by seeking to identify assets and unreported income from previously sheltered offshore accounts.¹⁵ Similarly to the IRS’s program, the initiative covers tax years 2003 through 2010 and is available to businesses and individuals.¹⁶ The level of cooperation between the state of New Jersey and the IRS gives practitioners and taxpayers much needed certainty before coming forward. The state of New Jersey has also implemented a total of five tax amnesty programs since 1987 (See chart in Appendix). The most recent one in 2009 ran the same year as the IRS’s OVDP, covered all state taxes and generated a record \$725 million.¹⁷ Finally, the state of New Jersey is also the third progressive state that will be running a tax amnesty program in 2014 for a limited time.¹⁸

B. Moderate Conformity Models

States using a moderate conformity model have a current VDP that includes individuals and have prior programs that did not run the same years as the OVDP. There is a total of twenty states and one district that use this model: Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky,

¹⁴ “NJ Division of Taxation – New Jersey Voluntary Disclosure Program.” September 20, 2014.
<http://www.state.nj.us/treasury/taxation/voldisc.shtml>

¹⁵ “NJ Division of Taxation – Offshore Voluntary Compliance Initiative.” September 20, 2014.
<http://www.state.nj.us/treasury/taxation/offshore.shtml>

¹⁶ Id.

¹⁷ “State Amnesty Programs – 1982 to Present.” September, 2014.
<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹⁸ “Current/Upcoming Amnesties.” September 2014.
http://www.taxadmin.org/fta/rate/current_amnesty.html

Mississippi, Missouri, Montana, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, West Virginia, Wisconsin, Wyoming and District of Columbia. Even though these states have not been as collaborative with the IRS as the states using the previous model, some of them have had great success.

The state of Florida has an ongoing VDP that is available to anyone who has any tax liability administered by the Florida Department of Revenue and that covers all state taxes.¹⁹ The state has implemented a total of four tax amnesty programs since 1987 (See chart in Appendix). The two most recent ones were in 2003 and 2010. The 2003 program generated \$80 million and the 2010 generated more than \$15 million.²⁰ The results are positive for a state with no individual income tax.

The state of Illinois has an ongoing VDP that is available to non-filer individuals and businesses.²¹ The program covers all taxes administered by the Department of Revenue, except some enabled by legislative acts.²² The state has implemented a total of three tax amnesty programs since 1984 (See chart in Appendix). The first program brought in \$160.5 million in 1984.²³ The Department of Revenue attributed the success to three factors: a vigorous promotional campaign; mailing notices to all known delinquent taxpayers; and increased enforcement mechanisms that caused taxpayers to fear they would be caught if they did not voluntarily disclose their tax liabilities.²⁴ The two most recent tax amnesty programs were in 2003 and

¹⁹ “FL Dept Rev – Voluntary disclosure of tax liabilities.”

http://dor.myflorida.com/dor/taxes/voluntary_disclosure.html

²⁰ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

²¹ “Illinois’ Voluntary Disclosure Program.”

http://www.taxadmin.org/fta/meet/msata_08/msata08/presentations/halldisclosure.pdf

²² Id.

²³ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

²⁴ Bonnie G. Ross, Federal Tax Amnesty: Reflecting on the States’ Experiences, 40 Tax Law. 145, 167 (1986)

2010, which generated \$532 million and \$717 million respectively by following these three factors.²⁵

The state of New York has an ongoing VDP that is available to any taxpayer who meets the eligibility criteria, even if their nonpayment was the result of fraudulent or criminal conduct.²⁶ The eligibility criteria include: taxpayer must not currently be under audit by the Tax Department for the tax type and year(s) that they are disclosing; taxpayer must not have received a bill for the past due taxes that they are disclosing; taxpayer must not be under criminal investigation by a New York State agency or political subdivision of the state; taxpayer must not be seeking to disclose participation in a tax avoidance transaction that is a federal or New York State reportable or listed transaction.²⁷ The state has also implemented five tax amnesty programs since 1986 with varying success (See chart in Appendix). The most recent one in 2010 generated the least revenue for the state compared to the previous programs.

The state of Pennsylvania has an ongoing VDP that is available to businesses and individuals that are not registered with the Department of Revenue and for which no investigations or collection actions have begun.²⁸ The state has implemented a total of two tax amnesty programs since 1995 (See chart in Appendix). The most recent one in 2010 generated \$261 million.²⁹ States using the moderate compliance model tend to offer less tax amnesty programs over the years. Some of the states have never offered tax amnesty programs (Montana, Utah and Wyoming).

²⁵ “State Amnesty Programs – 1982 to Present.” September, 2014.
<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

²⁶ “Voluntary Disclosure and Compliance Program – General Program Information.”
http://www.tax.ny.gov/enforcement/vold/program_info.htm

²⁷ Id.

²⁸ “Laws, Policies, Tax Bulletins & Notices – Voluntary Disclosure Program.”
http://www.portal.state.pa.us/portal/server.pt/community/laws___policies/11426/voluntary_disclosure_program/596520

²⁹ “State Amnesty Programs – 1982 to Present.” September, 2014.
<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

C. Moderately Limited Conformity Models

States using a moderately limited conformity model have a current VDP that does not include individuals and have prior programs that ran the same years as the OVDP. There is a total of eight states that use this model: Alabama, California, Colorado, Nebraska, Oregon, Texas, Virginia and Washington. These states are missing out on the opportunity for potential individual taxpayers to come forward and are accordingly missing out on revenue that can be generated for the state. Not including individuals also creates a level of uncertainty for practitioners and taxpayers when deciding whether voluntarily disclosing is the right path. Amending state returns and hoping not to have negative state consequences is not an optimal system for all parties involved. The positive aspect of this model is that these states have taken advantage of the IRS's OVDP by implementing programs that ran the same years as the federal program. However, only two of these states, Nebraska and Texas, have implemented tax amnesty programs after the IRS implemented the 2012 ongoing OVDP.

California has an ongoing VDP that is available only to qualified entities, shareholders or beneficiaries.³⁰ The state has implemented only two tax amnesty programs since 1984 (See chart in Appendix). On the other hand, the state implemented Voluntary Compliance Initiatives ("VCI") in 2004 and 2011. The VCI in 2004 permitted taxpayers to file amended returns and pay the tax and interest associated with abusive tax avoidance transactions.³¹ The VCI in 2011 generated \$350 million by providing an amnesty period for taxpayers to come forward by filing amended returns and remitting unpaid tax and interest resulting from unreported offshore

³⁰ "Voluntary Disclosure Program – California Franchise Tax Board."
https://www.ftb.ca.gov/Bills_and_Notices/voluntary/voluntary.shtml

³¹ "Voluntary Compliance Initiative"
https://www.ftb.ca.gov/law/tax_shelter/vci_faq.shtml

financial arrangements.³² This program complemented the IRS's 2011 OVDP. Unfortunately, it was a step in the right direction that was not followed after 2011.

The state of Nebraska has an ongoing VDP for businesses only. Any company who has never filed a tax return with Nebraska for the particular tax type at issue and who has not been contacted by the Department of Revenue prior to initiating the voluntary disclosure process is eligible.³³ The state implemented an ongoing tax amnesty program in 2004 and has seen an increasing trend in revenue (See chart in Appendix). Unlike the state's voluntary disclosure program, the tax amnesty program is available to businesses and individuals. There is a great advantage in having an ongoing program because taxpayers always have the opportunity to come forward and do not have to wait in fear of criminal prosecution and civil penalties.

The state of Texas has an ongoing VDP that is only available to businesses.³⁴ The state has implemented a total of four tax amnesty programs since 1984 (See chart in Appendix). The two most recent ones in 2007 and 2012 generated \$100 million each.³⁵ Similarly to the state of Florida, the state of Texas does not have an individual income tax. For states that do not have an individual income tax, the issues regarding the cooperation of state and federal governments have less of an impact on individuals. However, these same issues have an impact on businesses. The current voluntary disclosure program is already tailored to business. Therefore, the only remaining step to take for the state of Texas would be to have an ongoing tax amnesty program like the state of Nebraska.

³² "Tax Board Reports Results from Compliance Initiative." November 17, 2011.

https://www.ftb.ca.gov/aboutFTB/Press/2011/Release_47.shtml

³³ "Nebraska Voluntary Disclosure Program." January, 2008.

<http://www.revenue.nebraska.gov/info/7-250.pdf>

³⁴ "Voluntary Disclosure Agreements." March, 2007.

http://www.window.state.tx.us/taxinfo/taxpubs/tx96_576.html

³⁵ "State Amnesty Programs – 1982 to Present." September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

The state of Virginia has an ongoing VDP that is available to in-state businesses and out-of-state businesses that have enough activity in the state to establish nexus for sales and use tax and income tax.³⁶ A taxpayer is not eligible if: the taxpayer is under audit by the Department of Taxation; the taxpayer is already registered for the tax type in question; or the taxpayer has received bills, non-filer notices or any inquiries about a potential tax liability.³⁷ The state has implemented a total of three tax amnesty programs since 1990 (See chart in Appendix). The most recent one ran during the same year as the 2009 OVDP and generated \$102.1 million.³⁸

D. Limited Conformity Models

States using a limited conformity model have a current VDP that does not include individuals and have prior programs that did not run the same years as the OVDP. There is a total of eight states that use this model: Alaska, Arkansas, Idaho, Minnesota, Nevada, North Dakota, South Dakota and Tennessee. These states have not been successful in complying with the IRS's OVDP and have had poorer results than the previous models.

The state of Idaho has an ongoing VDP that is limited to businesses.³⁹ The state has only implemented one tax amnesty program in 1983 that covered individual income taxes and generated \$300,000.⁴⁰ The state also has a "Forgot to File" program that may reduce penalties for individuals and businesses that forgot to file income tax returns or register for appropriate permits by allowing them to file the returns voluntarily or register for the

³⁶ "Voluntary Disclosure Program – Commonwealth of Virginia Department of Taxation." June, 2014
<http://www.tax.virginia.gov/site.cfm?alias=VoluntaryDisclosure#eligible>

³⁷ Id.

³⁸ "State Amnesty Programs – 1982 to Present." September, 2014.
<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

³⁹ "Voluntary Disclosure Agreement Program – Idaho State Tax Commission." January 29, 2013.
<http://tax.idaho.gov/i-1115.cfm>

⁴⁰ "State Amnesty Programs – 1982 to Present." September, 2014.
<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

appropriate permits.⁴¹ Therefore, the only opportunity for individuals to come forward is under this program and the uncertainty it produces is not satisfying to practitioners and taxpayers.

The state of Minnesota has an ongoing VDP that helps businesses come into compliance with withholding tax laws.⁴² Similarly to the state of Idaho, the state has only implemented one tax amnesty program in 1984 that covered all state taxes and generated \$12.1M.⁴³ On the other hand, the state had an “Amnesty for Tax Evasion” program in 2010 that forgave penalties for offshore accounts and foreign entities used to evade taxes.⁴⁴ This program was a step in the right direction and should become an ongoing program to complement the IRS’s ongoing 2012 OVDP.

The state of North Dakota has an ongoing VDP that is only available to businesses and that covers income, withholding and sales and use taxes.⁴⁵ To be eligible, the company must not have filed a tax return with North Dakota for the tax type that is the subject of the VDP and must not have been contacted previously by the North Dakota Office of State Tax Commissioner or the Multistate Tax Commission.⁴⁶ The state has implemented a total of two tax amnesty programs since 1983 (See chart in Appendix). The first one in 1983 generated \$200,000 and the second one in 2004 generated \$6.9 million.⁴⁷

⁴¹ “Forgot To File? – Idaho State Tax Commission.” October 11, 2013.

<http://tax.idaho.gov/i-1007.cfm>

⁴² “Voluntary Disclosure Program.”

<http://www.revenue.state.mn.us/businesses/withholding/Pages/VoluntaryDisclosureProgram.aspx>

⁴³ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁴⁴ “Minnesota Offers Amnesty for Tax Evasion”

<http://taxes.about.com/od/statetaxes/a/Minnesota-offshore-disclosure.htm>

⁴⁵ “Guideline – Voluntary Disclosure Program.” March, 2012.

<http://www.nd.gov/tax/genpubs/gl-22051.pdf?20140930115715>

⁴⁶ *Id.*

⁴⁷ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

The state of South Dakota has an ongoing VDP that is only available to businesses and that covers sales, use and excise taxes.⁴⁸ Similarly to the state of Idaho and the state of Minnesota, the state has only implemented one tax amnesty program in 1999 that covered all state taxes and generated \$500,000.⁴⁹ On the other hand, the state of South Dakota does not have individual or corporate income taxes. Therefore, the importance of having an ongoing VDP that is available to individuals and that complements the IRS's OVDP is not as significant as other states that have individual and corporate income taxes.

E. No Conformity Models

States using a no conformity model do not have a current VDP. There is a total of four states that use this model: Delaware, Hawaii, New Mexico and Oklahoma. These states have an individual income tax but do not have voluntary disclosure programs. This creates the same problem that the states using limited and moderately limited compliance models. There is a level of uncertainty for taxpayers and practitioners in these states when applying for the IRS's OVDP.

The state of Hawaii does not have a formal VDP. The Department of Revenue has an informal practice allowing taxpayers to voluntarily disclose erroneous, fraudulent, or potentially criminal tax related behavior. Upon disclosure, the Department considers such voluntary compliance as a factor in whether to criminally investigate or refer such taxpayer for criminal prosecution.⁵⁰ Here is where the uncertainty mentioned above lies. Additionally and similarly to other states that use different models, taxpayers who are under federal or state audit or criminal investigation are

⁴⁸ "South Dakota Voluntary Disclosure Program."
<http://taxes.about.com/od/taxamnesty/p/SouthDakota.htm>

⁴⁹ "State Amnesty Programs – 1982 to Present." September, 2014.
<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁵⁰ "Tax Information Release No. 2010-07." August 17, 2010.
<http://files.hawaii.gov/tax/legal/tir/tir10-07.pdf>

not entitled to enter into a voluntary disclosure.⁵¹ On the other hand, the state had a “Tax Fresh Start Program” that ran the same year as the IRS’s 2009 OVDP, that covered all state taxes and that brought in \$14 million.⁵² However, the state of Hawaii did not repeat the program in 2011 or 2012.

III. RECOMMENDATIONS FOR CALIFORNIA

California should make a transition from its current moderately limited compliance model to a full compliance model. The first step the Franchise Tax Board (“FTB”) should take (whether through regulation or in implementing new legislation) is to offer their ongoing VDP to individuals. This would expand their opportunities to collect revenue and ease the minds of many taxpayers that are not qualified entities, shareholders or beneficiaries. A majority of thirty states and the District of Columbia offer their ongoing VDP to individuals and businesses. The state of California should join the majority to move forward.

The second step the FTB should take (whether through regulation or in implementation of new legislation) is to create a specific offshore voluntary compliance initiative as it has done so in the past with VCI 1 and VCI 2. However, the optimal way of moving forward would be to have this specific program available on an ongoing basis to compliment the IRS’s voluntary disclosure programs. The model state to follow is New Jersey. As mentioned above, the state of New Jersey has an ongoing Offshore Voluntary Compliance Initiative that was announced in 2013. The results from the state of New Jersey have been successful and the state of California should emulate the same tactics to achieve success..

⁵¹ Id.

⁵² “Department Of Taxation Announces Tax Fresh Start Program.” May 27, 2009. http://files.hawaii.gov/tax/news/media/2000_09/2009-05-27-freshstart.pdf

The third and final step the FTB (whether through regulation or new legislation) should take is to offer tax amnesties on a yearly basis to make sure that taxpayers always have the opportunity to come forward instead of only for a limited period of time. This process would compliment the currently ongoing voluntary disclosure programs offered by the IRS. The model state to follow for this suggestion is Nebraska. As mentioned above, Nebraska has had an ongoing tax amnesty program since 2004. The amount of revenue collected has had an increasing trend over recent years (See chart in Appendix). A similar ongoing tax amnesty program can generate additional revenue for the state of California.

Successful results are bound to occur if the FTB follows these three proposed steps. The FTB should also make sure that the three Illinois success factors mentioned above are met: a vigorous promotional campaign; mailing notices to all known delinquent taxpayers; and increased enforcement mechanisms that caused taxpayers to fear they would be caught if they did not voluntarily disclose their tax liabilities. There will certainly be costs associated with implementing and enforcing the programs. However, the potential amount of revenue that can be collected presently and that can be generated in the future from taxpayers changing their ways by fully complying with tax laws greatly outweigh these costs. The IRS has taken advantage of this opportunity and the \$4.4 billion dollars generated solely from the 2009 and 2011 programs has led them to keep the OVDP program ongoing since 2012,⁵³and expand opportunities for taxpayers to come forward by enacting the Streamline Domestic and Non-Resident Procedures and OVDP 2014. A similar approach from California should be implemented as soon as possible.

⁵³ IR-2012-5, January 9, 2012 “IRS Offshore Programs Produce \$4.4 Billion to Date for Nation’s Taxpayers; Offshore Voluntary Disclosure Program Reopens.”

APPENDIX

State/District	Current VDP?	Available for individuals?	Eligibility Requirements	Prior Programs and Results
Alabama	Yes	No	<p><u>1) Applicable taxes</u> Corporate income taxes, business privilege taxes, rental taxes, and sales and use taxes</p> <p><u>2) No prior ADOR contact</u> For 7 years prior to the initial written request</p> <p><u>3) No prior returns</u>⁵⁴</p>	<p><u>Tax Amnesty Program</u> Jan-Apr 1984; Brought in \$3.2M; Covered all state taxes.⁵⁵</p> <p><u>Operation Clean Slate</u> Feb-May 2009; Brought in \$8.1M; Covered Ind. Income, Corp. Income, Business, Sales & Use taxes.⁵⁶</p>
Alaska	Yes	No	<p><u>Qualified Business Entities</u> Only QBE's are eligible to participate. It must:</p> <ul style="list-style-type: none"> -Be a C corp, S corp, partnership, or LLC -Have never filed a return with the DOR -Have not been the subject of an inquiry by the DOR with respect to liability for income taxes -Have voluntarily come forward, prior to any unilateral contact from the DOR, and completed both an application for voluntary disclosure agreement and a full and accurate statement of its activities in Alaska for the five immediately preceding taxable or income years.⁵⁷ 	None
Arizona	Yes	Yes	Available for TPs who have	<u>Tax Amnesty Programs</u>

⁵⁴ Matthew S. Houser, Voluntary Disclosure Offers Taxpayer an Opportunity to Limit Exposure, Lexis AL Tax P.I. 5,849

⁵⁵ "State Amnesty Programs – 1982 to Present." September, 2014.
<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁵⁶ "Alabama's Operation Clean Slate a Success." August 17, 2009.
<http://revenue.alabama.gov/news/cleanslateasuccess.pdf>

⁵⁷ "Instructions For Alaska Application for Voluntary Disclosure."
<http://www.tax.alaska.gov/programs/documentviewer/viewer.aspx?5131f>

			not fulfilled their transaction privilege tax, use tax, corporate income tax, and individual income tax or withholding tax obligations. ⁵⁸	1) Nov 1982-Jan 1983; Brought in \$6M from; Covered all state taxes. 2) Jan-Feb 2002; Covered only individual income taxes. 3) Sep-Oct 2003; Brought in \$73M; Covered all state taxes except for property, estate and unclaimed property. 4) May-Jun 2009; Brought in \$32M; Covered all state taxes. ⁵⁹
Arkansas	Yes	No	Determined by the individual fact pattern for each applicant; Contact for tax purposes must not have been made prior to the applicant initiating the disclosure process; Reviewed on a case by case basis. ⁶⁰	<u>Tax Amnesty Program</u> 1) Sep-Nov 1987; Brought in \$1.7M; Covered all state taxes. 2) July-Dec 2004; Covered all state taxes ⁶¹
California	Yes	No	Available only to qualified entities, shareholders or beneficiaries ⁶²	<u>Tax Amnesty Programs</u> 1) Dec 1984-March 1985; Brought in \$154M from Ind. Income taxes and \$43M from Sales taxes. 2) Feb-March 2005; Covered Sales taxes. ⁶³ <u>Voluntary Compliance Initiatives</u> 1) Jan-Apr 2004; 2) Aug-Oct 2011; Brought in \$350.
Colorado	Yes	No	Limited to businesses. ⁶⁴	<u>Tax Amnesty Programs</u>

⁵⁸ “Voluntary Disclosure Program – Arizona Department of Revenue.”

<http://www.azdor.gov/Audits/VoluntaryDisclosure.aspx>

⁵⁹ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁶⁰ “DFA – Voluntary Disclosure Program.”

<http://www.dfa.arkansas.gov/offices/fieldAudit/Pages/voluntaryDisclosureProgram.aspx>

⁶¹ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁶² “Voluntary Disclosure Program – California Franchise Tax Board.”

https://www.ftb.ca.gov/Bills_and_Notices/voluntary/voluntary.shtml

⁶³ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

				<p>1) Sep-Nov 1985; Brought in \$6.4M; Covered all state taxes.</p> <p>2) Jun 2003; Brought in \$18.4M; Covered all state taxes.</p> <p>3) Oct-Nov 2011; Brought in \$11-14M; Covered all state taxes.⁶⁵</p>
Connecticut	Yes	Yes	<p>Available to businesses and individuals who are not in compliance with state tax laws; Each Disclosure Application is considered on its own merits and the DRS considers the following criteria:</p> <ul style="list-style-type: none"> -Nature and magnitude of such presence and activity and circumstances by which nexus may have been established; -Demonstration of taxpayer exercising reasonable care to determine that such activities and presence were or were not immune to taxation; -Evidence that taxpayer's noncompliance was not in willful disregard of the tax laws; -Demonstration of good faith by the taxpayer; -Benefits to the State by entering into a voluntary disclosure agreement with the taxpayer; and <p>Whether the taxpayer has collected any taxes.⁶⁶</p>	<p><u>Tax Amnesty Programs</u></p> <p>1) Sep-Nov 1990; Brought in \$54M; Covered all state taxes.</p> <p>2) Sep-Nov 1995; Brought in \$46.2M; Covered all state taxes.</p> <p>3) Sep-Dec 2002; Brought in \$109M; Covered all state taxes</p> <p>4) May-Jun 2009; Brought in \$40M; Covered all state taxes.</p> <p>5) Sep-Nov 2013; Brought in \$193.5M; Covered all state taxes.⁶⁷</p>
Delaware	No	No	-	<u>Voluntary Tax</u>

⁶⁴ “Voluntary Disclosure Program – Department of Revenue – Taxation”

<https://www.colorado.gov/pacific/tax/voluntary-disclosure-program>

⁶⁵ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁶⁶ “DRS: Voluntary Disclosure.”

<http://www.ct.gov/Drs/cwp/view.asp?a=1430&q=265826>

⁶⁷ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

				<u>Compliance Initiative</u> Sep-Oct 2009; Covered all state taxes. ⁶⁸
Florida	Yes	Yes	<u>Who is eligible?</u> Anyone who has any tax liability administered by the Florida DOR <u>What taxes are eligible?</u> Covers all state taxes ⁶⁹	<u>Tax Amnesty Programs</u> 1) Jan-Jun 1987; Brought in \$13M; Covered intangibles taxes. 2) Jan-Jun 1988; Brought in \$22.1M; Covered all state taxes. 3) July-Oct 2003; Brought in \$80M; Covered all state taxes. 4) Jul-Sep 2010; Covered all state taxes except unemployment tax and Miami-Dade County lake belt fees. ⁷⁰
Georgia	Yes	Yes	Available to businesses and individuals; The company or individual may not have been previously contacted by the DOR. ⁷¹	<u>Tax Amnesty Program</u> Oct-Dec 1992; Brought in \$51.3M; Covered all state taxes. ⁷²
Hawaii	No	No	The DOR has an informal practice allowing taxpayers to voluntarily disclose erroneous, fraudulent, or potentially criminal tax related behavior; Upon disclosure, the DOR considers such voluntary compliance as a factor in whether to criminally investigate or refer such TP for criminal prosecution; TPs who are under Federal or State audit or criminal investigation are not entitled to enter into a voluntary disclosure ⁷³	<u>Tax Fresh Start Program</u> May-Jun 2009; Brought in \$14M; Covered all state taxes. ⁷⁴

⁶⁸ “Delaware VTCI Tax Amnesty Program.”

<http://revenue.delaware.gov/amnesty.shtml>

⁶⁹ “FL Dept Rev – Voluntary disclosure of tax liabilities.”

http://dor.myflorida.com/dor/taxes/voluntary_disclosure.html

⁷⁰ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁷¹ “Georgia Department of Revenue Voluntary Disclosure Program.”

<https://etax.dor.ga.gov/compliance/index.aspx>

⁷² “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁷³ “Tax Information Release No. 2010-07.” August 17, 2010.

<http://files.hawaii.gov/tax/legal/tir/tir10-07.pdf>

⁷⁴ “Department Of Taxation Announces Tax Fresh Start Program.” May 27, 2009.

Idaho	Yes	No	Limited to businesses. ⁷⁵	<p><u>Tax Amnesty Program</u> May-Sep 1983; Brought in 300K; Covered Ind. Income taxes.⁷⁶</p> <p><u>Forgot to File Program</u> If an individual or business “forgot” to file income tax returns or register for appropriate permits, the state tax commission may consider reducing penalties that apply if the TP files a return voluntarily.⁷⁷</p>
Illinois	Yes	Yes	Available to non-filers only; Covers all taxes administered by the state department except some enabled by legislative acts. ⁷⁸	<p><u>Tax Amnesty Programs</u></p> <p>1) Oct-Nov 1984; Brought in \$160.5M; Covered all state taxes collected by the DOR but not taxes collected by other state agencies; DOR attributed the success to 3 factors: -a) A vigorous promotional campaign -b) Mailing notices to all known delinquent TPs -c) Increased enforcement mechanisms that caused TPs to fear they would be caught if they did not voluntarily disclose their tax liabilities.</p> <p>2) Oct-Nov 2003; Brought in \$532M; Covered all state taxes.</p> <p>3) Oct-Nov 2010; Brought in \$717M (\$314M for the state and the rest for local governments); Covered all state taxes.⁷⁹</p>

http://files.hawaii.gov/tax/news/media/2000_09/2009-05-27-freshstart.pdf

⁷⁵ “Voluntary Disclosure Agreement Program – Idaho State Tax Commission.” January 29, 2013.

<http://tax.idaho.gov/i-1115.cfm>

⁷⁶ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁷⁷ “Forgot To File? – Idaho State Tax Commission.” October 11, 2013.

<http://tax.idaho.gov/i-1007.cfm>

⁷⁸ “Illinois’ Voluntary Disclosure Program.”

http://www.taxadmin.org/fta/meet/msata_08/msata08/presentations/halldisclosure.pdf

Indiana	Yes	Yes	Available to businesses and individuals; Available only to those TPs who do not have brick-and-mortar nexus with Indiana; However, those TPs who do not qualify due to a physical presence within Indiana should still submit and the DOR will offer an alternative proposal. ⁸⁰	<u>Tax Amnesty Program</u> Sep-Nov 2005; Brought in \$255M; Covered all state taxes. ⁸¹
Iowa	Yes	Yes	The DOR has discretion and uses the following factors: -The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities; -The person must not currently be under audit/examination/criminal investigation by the DOR -The person must not have had any prior contact with the DOR which could lead to audit or assessment associated with the tax types or tax periods sought to be addressed under the program; -The type and extent of activities resulting in Iowa source income; -Failure to report was not due to fraud, intentional misrepresentation, an intent to evade tax, or willful disregard of Iowa tax laws -Any other relevant factors. ⁸²	<u>Tax Amnesty Programs</u> 1) Sep-Oct 1986; Brought in \$35.1M; Covered all state taxes. 2) Sep-Oct 2007; Covered all state taxes. ⁸³

⁷⁹ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁸⁰ “DOR: Voluntary Disclosure Program.”

<http://www.in.gov/dor/3616.htm>

⁸¹ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁸² “Voluntary Disclosure Program.”

<https://www.legis.iowa.gov/docs/ACO/IAC/LINC/03-07-2012.Rule.701.3.1.pdf>

⁸³ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

Kansas	Yes	Yes	<p>Available to businesses and individuals that are not in compliance with Kansas tax laws; The following criteria must be met:</p> <ul style="list-style-type: none"> -The TP has not been contacted by the DOR or the MTC with respect to any tax for which the taxpayer is requesting voluntary disclosure. -The TP is not under audit for any tax for which the TP is requesting voluntary disclosure. -The TP's failure to file is not the result of fraud or gross negligence on the part of the taxpayer.⁸⁴ 	<p><u>Tax Amnesty Programs</u></p> <p>1) July-Sep 1984; Brought in \$600K; Covered all state taxes.</p> <p>2) Oct-Nov 2003; Brought in \$53.7M; Covered all state taxes.</p> <p>3) Sep-Oct 2010; Covered all state taxes.⁸⁵</p>
Kentucky	Yes	Yes	<p>Available to businesses and individuals that are not in compliance with Kentucky tax laws.⁸⁶</p>	<p><u>Tax Amnesty Programs</u></p> <p>1) Sep 1988; Brought in \$100M; Covered all state taxes.</p> <p>2) Aug-Sep 2002; Brought in \$100M; Covered all state taxes.⁸⁷</p>

⁸⁴ “Kansas Department of Revenue – Voluntary Disclosure.”

<http://www.ksrevenue.org/voluntary.html>

⁸⁵ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁸⁶ “Kentucky: Department of Revenue – Voluntary Disclosure.”

<http://revenue.ky.gov/taxpro/voldisclose.htm>

⁸⁷ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

Louisiana	Yes	Yes	<p><u>Taxes Covered</u></p> <ul style="list-style-type: none"> -Individual income tax -Sales and use tax -Corp income & franchise tax -Severance taxes -Excise taxes <p><u>Who is eligible?</u> Any TP who has a filing requirement for a tax administered by the Louisiana DOR, is not currently registered with the DOR for the same tax, and has not been previously contacted by the DOR concerning their filing requirement is eligible for consideration of a voluntary disclosure agreement.⁸⁸</p>	<p><u>Tax Amnesty Programs</u></p> <ol style="list-style-type: none"> 1) Oct-Dec 1985; Brought in \$1.2M; Covered all state taxes. 2) Oct-Dec 1987; Brought in \$300K; Covered all state taxes. 3) Oct-Dec 1998; Brought in \$1.3M; Covered all state taxes. 4) Sep-Oct 2001; Brought in \$192.9M; Covered all state taxes. 5) Sep-Oct 2009; Brought in \$303.7M; Covered all state taxes. 6) Sep-Nov 2013; Brought in \$435M; Covered all state taxes. 7) Oct-Nov 2014; Current program; Covers all state taxes.⁸⁹
Maine	Yes	Yes	<p>Available to businesses and individuals with unfiled or underreported tax liability; Available for most of the major tax types administered by Maine Revenue Services; TP must not have been contacted by MRS concerning the tax type or period at issue.⁹⁰</p>	<p><u>Tax Amnesty Programs</u></p> <ol style="list-style-type: none"> 1) Nov-Dec 1990; Brought in \$29M; Covered all state taxes. 2) Sep-Nov 2003; Brought in \$37.6M; Covered all state taxes. 3) Sep-Nov 2009; Brought in \$16.2M; Covered all state taxes.⁹¹

⁸⁸ “Voluntary Disclosure Agreement.” July 1, 2011.

<http://revenue.louisiana.gov/forms/misc/FAQ.pdf>

⁸⁹ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁹⁰ “Voluntary Disclosure Program, MRS.”

<http://www.maine.gov/revenue/divisions/voldisclosure.html>

⁹¹ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

Maryland	Yes	Yes	Available to businesses and individuals; No previous contact by the Comptroller's Office about the liability. ⁹²	<u>Tax Amnesty Programs</u> 1) Sep-Nov 1987; Brought in \$34.6M; Covered all state taxes. 2) Sep-Oct 2001; Brought in \$39.2M; Covered all state taxes. 3) Sep-Oct 2009; Brought in \$9.6M; Covered Income, Withholding, Sales & Use taxes. ⁹³
Massachusetts	Yes	Yes	<u>Criteria</u> -TP has had no previous contact by the DOR relating to the issues of the voluntary disclosure; -TP is not registered for the tax type involved in the disclosure -The tax hasn't been collected. ⁹⁴	<u>Tax Amnesty Programs</u> 1) Oct 1983-Jan 1984; Brought in \$86.5M; Covered all state taxes. 2) Oct-Nov 2002; Brought in \$96.1M; Covered all state taxes. 3) Jan-Feb 2003; Brought in \$11.2M; Covered all state taxes. 4) Apr-Jun 2010; Brought in \$32.6M; Covered all state taxes. 5) Sep-Oct 2014; Current program; Covers all state taxes. ⁹⁵
Michigan	Yes	Yes	Available to nonfilers who have nor been previously contacted by the Department of Treasury and who meet certain other criteria; Michigan resident TPs do not qualify. ⁹⁶	<u>Tax Amnesty Programs</u> 1) May-Jun 1986; Brought in \$109.8M; Covered all state taxes. 2) May-Jun 2002; Covered all state taxes. 3) May-Jun 2011; Brought in \$76M; Covered all state taxes. ⁹⁷

⁹² "Maryland Taxes – Tax Compliance and Enforcement."

http://taxes.marylandtaxes.com/Tax_Compliance_and_Enforcement/Tax_Compliance_Information/Get_He lp/Assistance_Programs/Voluntary_Disclosure.shtml

⁹³ "State Amnesty Programs – 1982 to Present." September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁹⁴ "Voluntary Disclosure Program."

<http://www.mass.gov/dor/tax-professionals/filing-and-reporting/voluntary-disclosure.html>

⁹⁵ "State Amnesty Programs – 1982 to Present." September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

⁹⁶ "Taxes – Voluntary Disclosure by Taxpayer."

<https://www.michigan.gov/taxes/0,4676,7-238-43549-156155--,00.html>

⁹⁷ "State Amnesty Programs – 1982 to Present." September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

Minnesota	Yes	No	Minnesota's VDP is an ongoing program that helps businesses come into compliance with their Withholding Tax Laws. ⁹⁸	<u>Tax Amnesty Program</u> Aug-Oct 1984; Brought in \$12.1M; Covered all state taxes. <u>Amnesty for Tax Evasion</u> July-Oct 2010; Forgave penalties for offshore accounts and foreign entities used to evade taxes. ⁹⁹
Mississippi	Yes	Yes	Available to TPs who discover a past filing obligation and liability that have not been discharged; Not available to TPs who have engaged in income shifting strategies, tax shelter activities, fraud, or negligence. ¹⁰⁰	<u>Tax Amnesty Programs</u> 1) Sep-Nov 1986; Brought in \$1M; Covered all state taxes. 2) Sep-Dec 2004; Brought in \$7.9M; Covered all state taxes. ¹⁰¹
Missouri	Yes	Yes	All taxes administered by the DOR and any type of TP are eligible; TP who files a return but underreports is not eligible; No prior contact by the DOR concerning the filing of a return and the payment of a tax. ¹⁰²	<u>Tax Amnesty Programs</u> 1) Sep-Oct 1983; Brought in \$900K; Covered all state taxes. 2) Aug-Oct 2002; Brought in \$76.4M; Covered all state taxes. 3) Aug-Oct 2003; Brought in \$20M; Covered all state taxes. ¹⁰³

⁹⁸ "Voluntary Disclosure Program."

<http://www.revenue.state.mn.us/businesses/withholding/Pages/VoluntaryDisclosureProgram.aspx>

⁹⁹ "State Amnesty Programs – 1982 to Present." September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹⁰⁰ "Voluntary Disclosure Agreement (VDA Program)." October, 2009.

https://www.dor.ms.gov/docs/corp_tb.voluntarydisclosure.pdf

¹⁰¹ "State Amnesty Programs – 1982 to Present." September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹⁰² "Voluntary Disclosure Program."

<http://dor.mo.gov/business/voluntary/>

¹⁰³ "State Amnesty Programs – 1982 to Present." September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

Montana	Yes	Yes	<p>Applies to any tax administered by the DOE and to any type of domestic or foreign TP who is subject to tax in Montana; The entity or individual must meet all of the following criteria:</p> <ul style="list-style-type: none"> -Has not filed a return for the tax type covered by the agreement within the last five years; -Has had no previous contact with the DOR or its agencies regarding the taxes covered by the agreement; -Has had no notification of an impending audit by the DOR or its agencies; -Has voluntarily come forward and made an application; -Agrees to file returns specified and pay all taxes and statutory interest for the entire lookback period; -Agrees to register with the Montana Secretary of State, file returns, and pay all taxes for periods after the lookback period; -Has not been a party to any criminal investigation or pending civil or criminal litigation for nonpayment, delinquency, or fraud in relation to any tax due.¹⁰⁴ 	None
Nebraska	Yes	No	<p><u>Who Qualifies?</u></p> <ul style="list-style-type: none"> -Any company who has never filed a tax return with Nebraska for the particular tax type at issue; -A company who has not been contacted by the DOR prior to initiating the voluntary disclosure process.¹⁰⁵ 	<p><u>Tax Amnesty Program</u> Ongoing since 2004; Available to businesses and individuals; Recent Results: -2013 → \$8.98M -2012 → \$6.52M -2011 → \$6.85M -2010 → \$5.6M -2009 → \$4.66M (Increasing Trend).¹⁰⁶</p>

¹⁰⁴ “Voluntary Disclosure Program.”

http://www.revenue.mt.gov/Portals/9/tax_professionals/voluntary_disclosure/voluntarydisclosure_program.pdf

¹⁰⁵ “Nebraska Voluntary Disclosure Program.” January, 2008.

<http://www.revenue.nebraska.gov/info/7-250.pdf>

¹⁰⁶ “Tax Amnesty Results.” <http://www.revenue.nebraska.gov/research/amnesty.html>

Nevada	Yes	No	Businesses can file an application for voluntary disclosure of failure to file return. ¹⁰⁷	<u>Tax Amnesty Programs</u> 1) Feb-Jun 2002; Brought in \$7.3M; Covered all state taxes. 2) July-Nov 2008; Covered Sales, Business and License taxes. 3) July-Oct 2010; Covered all state taxes. ¹⁰⁸
New Hampshire	Yes	Yes	Available to businesses and individuals that are not in compliance with New Hampshire tax laws; Covers any tax administered by the DOR. ¹⁰⁹	1) Dec 1997-Feb 1998; Brought in \$13.5M; Covered all state taxes. 2) Dec 2001-Feb 2002; Brought in \$13.5M; Covered all state taxes. ¹¹⁰
New Jersey	Yes	Yes	<u>Voluntary Disclosure Program</u> General guidelines: -No previous contact with the TP by the Division of Taxation or any of its agents -TP is not registered for the taxes they wish to come forward on -TP is not currently under criminal investigation -TP must be willing to pay outstanding tax liabilities and file the prior year returns within a reasonable period. ¹¹¹ <u>Offshore Voluntary Compliance Initiative</u> Compliments the VDP by seeking to identify assets and unreported income from previously sheltered offshore accounts; Similar to the IRS VDP, the initiative covers tax years 2003 through 2010; Available to businesses and individuals. ¹¹²	<u>Tax Amnesty Programs</u> 1) Sep-Dec 1987; Brought in \$186.5M; Covered all state taxes. 2) March-Jun 1996; Brought in \$359M; Covered all state taxes. 3) Apr-Jun 2002; Brought in \$276.9M; Covered all state taxes. 4) May-Jun 2009; Brought in \$725M; Covered all state taxes. 5) Oct-Nov 2014; Current program; Covers all state taxes. ¹¹³

¹⁰⁷ "Application For Voluntary Disclosure Of Failure To File Return."
http://tax.nv.gov/uploadedFiles/taxnvgov/Content/Forms/VOL%20DIS-01%2001%20Voluntary_Disclosure%2009072011.pdf

¹⁰⁸ "State Amnesty Programs – 1982 to Present." September, 2014.
<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹⁰⁹ "Voluntary Disclosure Program – NH Department of Revenue Administration."
<http://www.revenue.nh.gov/assistance/voluntary-disclosure.htm>

¹¹⁰ "State Amnesty Programs – 1982 to Present." September, 2014.
<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹¹¹ "NJ Division of Taxation – New Jersey Voluntary Disclosure Program." September 20, 2014.
<http://www.state.nj.us/treasury/taxation/voldisc.shtml>

¹¹² "NJ Division of Taxation – Offshore Voluntary Compliance Initiative." September 20, 2014.

New Mexico	No	No	-	<u>Tax Amnesty Programs</u> 1) Aug-Nov 1985; Brought in \$13.6M; Covered most state taxes. 2) Aug-Nov 1999; Brought in \$45M; Covered all state taxes. 3) Jun-Sep 2010; Covered all state taxes ¹¹⁴
New York	Yes	Yes	Available to any TP who meets the eligibility criteria, <u>even if their nonpayment was the result of fraudulent or criminal conduct</u> ; Covers all taxes administered by the Tax Department, including income, corporate and sales; An applicant must meet all of the following criteria: -TP must not currently be under audit by the Tax Department for the tax type and tax year(s) that they are disclosing. -TP must not have received a bill for the past due taxes that they are disclosing. -TP must not be under criminal investigation by a NY State agency or political subdivision of the state -TP must not be seeking to disclose participation in a tax avoidance transaction (commonly known as a tax shelter) that is a federal or New York State reportable or listed transaction. ¹¹⁵	<u>Tax Amnesty Programs</u> 1) Nov 1985-Jan 1986; Brought in \$401.3M; Covered most state taxes. 2) Nov 1996-Jan 1997; Brought in \$253.4M; Covered all state taxes. 3) Nov 2002-Jan 2003; Brought in \$582.7M; Covered all state taxes. 4) Oct 2005-Mar 2006; Brought in \$349M; Covered Income and Corporate taxes. 5) Jan-Mar 2010; Brought in \$56.5M; Covered all state taxes. ¹¹⁶

<http://www.state.nj.us/treasury/taxation/offshore.shtml>

¹¹³ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹¹⁴ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹¹⁵ “Voluntary Disclosure and Compliance Program – General Program Information.”

http://www.tax.ny.gov/enforcement/vold/program_info.htm

¹¹⁶ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

North Carolina	Yes	Yes	<p>Applies to nonfiler TPs; Does not apply to TPs that underreport; Covers any tax administered by the DOR; TP must meet all of the following criteria:</p> <ul style="list-style-type: none"> -TP has not been contacted by the DOR, IRS or MTC with respect to any tax for which the TP is requesting voluntary disclosure; -TP does not have outstanding tax liabilities other than those reported; -TP is not under audit for any tax; -TP pays the tax due plus accrued interest within 60 days from the date of acceptance; -Upon request, TP makes records available for audit to verify the amount of the TP's liability and the accuracy of the representations made by the TP; -TP cannot have previously participated in the VDP.¹¹⁷ 	<p><u>Tax Amnesty Program</u> Sep-Dec 1989; Brought in \$37.6M; Covered all state taxes except local taxes and real property taxes.¹¹⁸</p>
North Dakota	Yes	No	<p>Available only to businesses; Covers income, withholding and sales and use taxes; Eligible participants include:</p> <ul style="list-style-type: none"> -A company that has not filed a tax return with ND for the tax type that is the subject of the VDP; -A company that has not been contacted previously by the ND Office of State Tax Commissioner or the MTC regarding its filing status.¹¹⁹ 	<p><u>Tax Amnesty Programs</u> 1) Sep-Nov 1983; Brought in \$200K; Covered all state taxes. 2) Oct 2003-Jan 2004; Brought in \$6.9M; Covered all state taxes.¹²⁰</p>

¹¹⁷ “Voluntary Disclosure Program.”

<http://www.dornc.com/practitioner/voluntary.html>

¹¹⁸ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹¹⁹ “Guideline – Voluntary Disclosure Program.” March, 2012.

<http://www.nd.gov/tax/genpubs/gl-22051.pdf?20140930115715>

¹²⁰ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

Ohio	Yes	Yes	Available to businesses and individuals. ¹²¹	<u>Tax Amnesty Programs</u> 1) Oct 2001-Jan 2002; Brought in \$48.5M; Covered all state taxes. 2) Jan-Feb 2006; Brought in \$63M; Covered all state taxes. ¹²²
Oklahoma	No	No	-	<u>Tax Amnesty Programs</u> 1) July-Dec 1984; Brought in \$13.9M; Covered Income and Sales taxes. 2) Aug-Nov 2002; Covered all state taxes except for property and motor fuel taxes. 3) Sep-Nov 2008; Covered all state taxes. ¹²³
Oregon	Yes	No	Available only to businesses. ¹²⁴	<u>Tax Amnesty Program</u> Oct-Nov 2009; Brought in ~32M; Covered Personal, Corporate and Inheritance taxes. ¹²⁵
Pennsylvania	Yes	Yes	Available to businesses and individuals; Available to TPs who are not registered with the DOR and for which no investigations or collection actions have begun. ¹²⁶	<u>Tax Amnesty Program</u> 1) Oct 1995-Jan 1996; Covered all state taxes. 2) April-Jun 2010; Brought in \$261M; Covered all state taxes. ¹²⁷

¹²¹ “Voluntary Disclosure Programs.”

http://www.tax.ohio.gov/other/voluntary_disclosure.aspx

¹²² “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹²³ Id.

¹²⁴ “Voluntary disclosure agreement.”

<http://www.oregon.gov/dor/BUS/Pages/foreign-corporations.aspx>

¹²⁵ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹²⁶ “Laws, Policies, Tax Bulletins & Notices – Voluntary Disclosure Program.”

http://www.portal.state.pa.us/portal/server.pt/community/laws___policies/11426/voluntary_disclosure_program/596520

¹²⁷ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

Rhode Island	Yes	Yes	Available to businesses and individuals; The following criteria must be met: -TP has not been previously contacted by the Division of Taxation -TP was not registered for the tax type involved for the disclosure period -Has not collected any taxes included in the disclosure. ¹²⁸	<u>Tax Amnesty Program</u> 1) Oct 1986-Jan 1987; Brought in \$700K; Covered all state taxes. 2) Apr-Jun 1996; Brought in \$7.9M; Covered all state taxes. 3) July-Sep 2006; Brought in \$6.5M; Covered all state taxes. 4) Sep-Nov 2012; Brought in \$22.3M; Covered all state taxes. ¹²⁹
South Carolina	Yes	Yes	Available to businesses and individuals who have sufficient SC business activity or connection (“nexus”) and have not registered with the department to collect or remit taxes. ¹³⁰	<u>Tax Amnesty Programs</u> 1) Sep-Nov 1985; Brought in \$7.1M; Covered all state taxes. 2) Oct-Dec 2002; Brought in \$66.2M; Covered all state taxes. ¹³¹
South Dakota	Yes	No	Available only to businesses; Covers sales, use and excise taxes. ¹³²	<u>Tax Amnesty Program</u> April-May 1999; Brought in \$500K; Covered all state taxes. ¹³³
Tennessee	Yes	No	Available only to businesses; Covers sales, use and excise taxes. ¹³⁴	None

¹²⁸ “State of Rhode Island: Division of Taxation: Voluntary Disclosure Program.” January, 2011.

http://www.tax.ri.gov/misc/voluntary_disclosure.php

¹²⁹ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹³⁰ “Voluntary Disclosure Program.”

<http://www.sctax.org/Tax+Information/Voluntary+Disclosure+Program/voldisc.htm>

¹³¹ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹³² “South Dakota Voluntary Disclosure Program.”

<http://taxes.about.com/od/taxamnesty/p/SouthDakota.htm>

¹³³ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹³⁴ “Tennessee Department of Revenue – Voluntary Disclosure Program.”

<http://www.state.tn.us/revenue/pubs/voluntarydisclosure2006.pdf>

Texas	Yes	No	Available only to businesses. ¹³⁵	<u>Tax Amnesty Programs</u> 1) Feb 1984; Brought in \$500K; Covered all state taxes. 2) March 2004; Covered all state taxes. 3) Jun-Aug 2007; Brought in \$100M; Covered all state taxes. 4) Jun-Aug 2012; Brought in \$100M; Covered all state taxes. ¹³⁶
Utah	Yes	Yes	Available to businesses and individuals to resolve prior business tax liabilities. ¹³⁷	None
Vermont	Yes	Yes	Available to businesses and individuals; Covers all state taxes. ¹³⁸	<u>Tax Amnesty Programs</u> 1) May-Jun 1990; Covered all state taxes. 2) July-Aug 2009; Brought in \$2.2M; Covered all state taxes. ¹³⁹
Virginia	Yes	No	Available to out-of-state businesses that have enough activity in the state to establish nexus for sales and use tax and/or income tax; Also available to in-state businesses; Not eligible if: -TP under audit by the Department; -TP is already registered for the tax type in question; or -TP has received bills, nonfiler notices or any inquiries about a potential tax liability. ¹⁴⁰	<u>Tax Amnesty Programs</u> 1) Feb-Mar 1990; Brought in \$32.2M; Covered all state taxes. 2) Sep-Nov 2003; Brought in \$98.3M; Covered all state taxes. 3) Oct-Dec 2009; Brought in \$102.1M; Covered all state taxes. ¹⁴¹

¹³⁵ “Voluntary Disclosure Agreements.” March, 2007.

http://www.window.state.tx.us/taxinfo/taxpubs/tx96_576.html

¹³⁶ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹³⁷ “Voluntary Disclosure Program.”

<http://www.tax.utah.gov/forms/pubs/pub-04.pdf>

¹³⁸ “Voluntary Disclosure.”

<http://www.state.vt.us/tax/disclosure.shtml>

¹³⁹ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹⁴⁰ “Voluntary Disclosure Program – Commonwealth of Virginia Department of Taxation.” June, 2014

<http://www.tax.virginia.gov/site.cfm?alias=VoluntaryDisclosure#eligible>

¹⁴¹ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

Washington	Yes	No	To qualify, a business must have: - Never registered with or reported taxes to the Department; - Never been contacted by the Department for enforcement purposes; and - Not engaged in evasion or misrepresentation in reporting tax liabilities. ¹⁴²	<u>Tax Amnesty Programs</u> Feb-Apr 2011; Brought in \$346M; Covered all state taxes. ¹⁴³
West Virginia	Yes	Yes	Available to qualified businesses and individuals; To qualify, TP must meet the following requirements: - Have not filed a tax return, nor have been registered to file returns for the taxes TP wants to disclose; - Agree to disclose all applicable taxes administered by the DOR; - Must register and obtain a valid business registration certificate; - If the TP is a business, other than a sole-proprietorship or general partnership, TP must obtain proper registration with the WV Secretary of State's Office; - Have not been previously contacted by the DR; - Not under audit by the DOR - Not under investigation by the Criminal Investigations Unit of the DOR - Has not been contacted by the MTC on behalf of WV. ¹⁴⁴	<u>Tax Amnesty Programs</u> 1) Oct-Dec 1986; Brought in \$15.9M; Covered all state taxes. 2) Sep-Oct 2004; Brought in \$10.4M; Covered all state taxes. ¹⁴⁵

¹⁴² “Voluntary Disclosure Program.”

http://dor.wa.gov/content/doingbusiness/registermybusiness/doingBus_vod.aspx#who

¹⁴³ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹⁴⁴ “Voluntary Disclosure Agreements.”

<http://www.wva.state.wv.us/wvtax/TaxpayerAssistance.aspx>

¹⁴⁵ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

Wisconsin	Yes	Yes	Available to businesses and individuals; The following conditions must be met: -No tax returns filed for the period in question -No registration for the type of tax involved during the period in question -No contact by the DOR within the last 6 years regarding registration/filing requirement or an assessment/audit assignment. ¹⁴⁶	<u>Tax Amnesty Programs</u> 1) Sep-Nov 1985; Brought in \$27.3M; Covered all state taxes. 2) Jun-Aug 1998; Brought in \$30.9M; Covered all state taxes. ¹⁴⁷
Wyoming	Yes	Yes	Covers any person establishing sufficient contact with the state to qualify the person as a vendor under statute; Applies only to sales tax. ¹⁴⁸	None
District of Columbia	Yes	Yes	Available to businesses and individuals; TP not eligible if contacted by the Office of Tax and Revenue or its representatives. ¹⁴⁹	<u>Tax Amnesty Programs</u> 1) July-Sep 1987; Brought in \$24.3M; 2) July-Aug 1995; Brought in \$19.5M; Covered all state taxes except real property taxes. 3) Aug-Sep 2010; Covered all state taxes except real property taxes. ¹⁵⁰

¹⁴⁶ “Wisconsin Voluntary Disclosure Program.”

<http://www.revenue.wi.gov/pubs/voldis.html>

¹⁴⁷ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>

¹⁴⁸ “Wyoming’s Sales Tax Voluntary Disclosure Program.”

<http://www.formsend.com/a/44655.pdf>

¹⁴⁹ “Voluntary Disclosure Program – OTR”

<http://otr.cfo.dc.gov/page/voluntary-disclosure-program>

¹⁵⁰ “State Amnesty Programs – 1982 to Present.” September, 2014.

<http://www.taxadmin.org/fta/rate/amnesty1.pdf>