

STATE TAX AMNESTY DETAILS

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Introduction

This SALT Buzz provides information on various state amnesty programs that may assist taxpayers in limiting state and local tax exposures. This SALT Buzz will be updated periodically to discuss new state amnesty programs or to provide updates to scheduled state tax amnesty programs.

If you have an unreported liability in a state other than those discussed in this SALT Buzz, don't worry. Most states have voluntary disclosure programs that are similar to amnesty programs, in which a taxpayer enters into an agreement with the state to remit unreported liability for a limited period of time without the payment of penalty (and sometimes interest). Participation in voluntary disclosure programs can generally be done on an anonymous basis. Please see our previous [SALT Buzz](#) dated February 19, 2017 for more information on voluntary disclosure programs.

October 13, 2017

Multistate Tax Commission Online Marketplace Seller Voluntary Disclosure Initiative:

The Multistate Tax Commission (“MTC”) announced that it is extending the application deadline for its Online Marketplace Seller Voluntary Disclosure Initiative (the “Initiative”) from October 17, 2017 to November 1, 2017. The Initiative is discussed in detail in the August 21, 2017 entry below.

Rhode Island:

The Rhode Island Division of Taxation (“RIDT”) released Advisory 2017-29 informing taxpayers of the upcoming Rhode Island tax amnesty program that will begin on December 1, 2017, and continue until February 15, 2018. All unpaid Rhode Island state taxes from periods ending on or before December 31, 2016 are eligible for the tax amnesty program. RIDT will also be sending notices to known taxpayers with balances due to inform those taxpayers of the ability to participate in the Rhode Island tax amnesty program. RIDT will waive penalties and ¼ of the interest normally due for taxpayers that participate in the Rhode Island tax amnesty program. RIDT will be posting additional information for the Rhode Island tax amnesty program, such as application procedures, on the dedicated tax amnesty [website](#). A copy of Advisory 2017-29 can be viewed [here](#). The Rhode Island tax amnesty program was also discussed in the August 21, 2017 entry below.

September 18, 2017

Virginia:

The Virginia Department of Taxation (“VDT”) has announced in its final tax amnesty program guidelines that the Virginia tax amnesty program will begin September 13, and continue until November 14, 2017. The tax amnesty program guidelines can be viewed [here](#). A complete list of the taxes and periods eligible for the Virginia tax amnesty program are documented in the program guidelines, and include:

Tax	Periods Eligible for Amnesty
Bank Franchise Tax	Taxable Year 2016 and prior
Business Consumer's Use Tax	Month of April 2017 and prior
Corporate Income Tax	Taxable Year 2015 and prior
Employer Income Tax Withholding	Month of April 2017 and prior
Fiduciary Income Tax	Taxable Year 2015 and prior
Individual Income Tax	Taxable Year 2015 and prior
Insurance Premiums License Tax	Taxable Years 2013 through 2016
Pass-Through Entity Information Return	Taxable Year 2015 and prior
Retail Sales and Use Tax	Month of April 2017 and prior
Out-of-State Dealer's Use Tax	Month of April 2017 and prior.

The Virginia tax amnesty program does not require a specific application. Rather, to be eligible for the Virginia tax amnesty benefits, a taxpayer must pay the tax due, pay one half of the required interest, and file any required returns before the end of the Virginia tax amnesty period. Taxpayers participating in the Virginia tax amnesty program will have penalties and one half of the required interest waived. If a taxpayer is unable to pay the full amount of tax and one half of the required interest by November 14, 2017, the VDT will enter into payment plans with the taxpayer, but the taxpayer will not receive the reduced interest amnesty benefit.

The VDT will be sending out notices to most of the taxpayers eligible for the Virginia tax amnesty program including taxpayers that received tax bills dated before June 15, 2017.

Taxpayers that do not participate in the Virginia tax amnesty program will be subject to an additional 20% penalty for assessments for periods eligible for the Virginia tax amnesty program. However, the program guidelines list situations in which VDT may waive the additional 20% penalty including for situations where the taxpayer enters into a payment plan with VDT during the Virginia tax amnesty period.

The Virginia tax amnesty program is also discussed below in our entries dated February 26, 2017 and July 17, 2017.

September 5, 2017

The Multistate Tax Commission has added five additional states to the Online Marketplace Seller Voluntary Disclosure Initiative including District of Columbia, Massachusetts, Minnesota, Missouri, and North Carolina. The August 21, 2017 entry below has been updated to include these states and special considerations for District of Columbia, Massachusetts, and Minnesota.

As a reminder, the Oklahoma tax amnesty program begins September 1, 2017 and continues until November 30, 2017.

August 21, 2017

Multistate Tax Commission Online Marketplace Seller Voluntary Disclosure Initiative:

The Multistate Tax Commission (“MTC”) is offering an Online Marketplace Seller Voluntary Disclosure Initiative (the “Initiative”) that acts as a tax amnesty program for online marketplace sellers. An online marketplace seller is a seller that uses a marketplace provider/facilitator to facilitate retail sales. The MTC defines a marketplace provider/facilitator as “a person who facilitates a retail sale by an online marketplace seller by (1) listing or advertising for sale by the online marketplace seller on a website, tangible personal property, services, or digital goods that are subject to sales/use tax; (2) either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the online marketplace seller; and provides fulfillment services to the online marketplace seller.” A taxpayer that is not considered to be an online marketplace seller is not eligible for the Initiative.

The Initiative is being offered through the MTC Multistate Voluntary Disclosure Program. The current list of states that have announced participation in the Initiative includes Alabama, Arkansas, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, and Wisconsin. A taxpayer is permitted to pick and choose which

states that it wants to submit applications to participate in the Initiative. The MTC will accept applications for the Initiative from August 17, 2017 through October 17, 2017.

In general, if an online marketplace seller participates in the Initiative, the states have agreed to waive any prior period sales/use tax liabilities, income/franchise tax liabilities, interest, and penalties. The online marketplace seller will be required to register for sales/use tax and income/franchise tax in the state no later than December 1, 2017. Thus, the online marketplace seller will be required to collect sales tax, remit sales/use tax to the state, and file the required sales/use tax returns on a go-forward basis. The online marketplace seller will be required to file returns and pay income/franchise tax for the tax year that includes December 1, 2017 (i.e., for a calendar year taxpayer, an income/franchise tax return will be due for the period of January 1, 2017 through December 31, 2017). It is unclear if an online marketplace seller could claim P.L. 86-272 protection on net income taxes if the only connection in a state is the use of a marketplace provider/facilitator to facilitate sales into a state.

There are a number of states participating in the Initiative that decided to include a look-back period for sales/use tax and/or income/franchise tax. These states include:

- Colorado will waive the lookback period for sales/use taxes, but an online marketplace seller will be required to file and pay Colorado income taxes for the previous four years. Note that Colorado has a factor presence nexus standard of \$500,000, such that it is possible that an online marketplace seller may not meet the factor presence standard. Online marketplace sellers will be required to file sales/use tax and income tax returns for all future tax periods.
- District of Columbia has a standard lookback period of 3 years for its voluntary disclosure program and has indicated that it will consider a shorter lookback period for applications received under the Initiative, but has not committed to do so.
- Massachusetts will require online marketplace sellers to comply with the standard voluntary disclose program lookback period of

three years. It is possible to shorten the lookback period if the online marketplace seller can prove nexus did not exist during the entire lookback period.

- Minnesota will require online marketplace sellers to comply with the standard lookback period of 3 years for sales/use tax and 4 years (the prior 3 years, plus the current year) for income tax. It is possible to shorten the lookback period if the online marketplace seller can prove nexus did not exist during the entire lookback period.
- Nebraska will consider waiving back sales/use tax and income/franchise tax liability, but as of the time of this publication has not committed to the waiver.
- Wisconsin will require payment of sales/use tax for periods beginning January 1, 2015, and payment of income tax for the 2015 and 2016 tax years. Online marketplace sellers will be required to file sales/use tax and income tax returns for all future tax periods.

In order for a taxpayer to qualify to participate in the Initiative, the following conditions must be met:

- The taxpayer must not have registered as a seller or retailer in the state, filed sales/use tax or income/franchise tax returns in the state, made payments of these taxes to the state, or had any prior contact with the state regarding a sales/use or income/franchise tax liability in the state.
- The taxpayer must be an online marketplace seller that uses a marketplace provider/facilitator to make retail sales in the state. The taxpayer cannot have physical presence nexus in the state, except for inventory stored in a third party distribution center.
- The taxpayer has timely applied to the MTC Multistate Voluntary Disclosure Program requesting to participate in the Initiative.

The MTC voluntary disclosure program is an opportunity for online marketplace sellers to mitigate the potential sales/use and income/franchise

tax liabilities. However, it is possible that the taxpayer's identity could be shared with states outside the Initiative if another state makes a specific request to the state with the taxpayer's name and identification number. Taxpayers should consider both the opportunities and the risks of participating in the Initiative.

Ohio:

The Ohio amnesty program is discussed in our July 17, 2017 entry below. We understand that a marketing firm will be hired in the near future to promote the Ohio amnesty program and that the Ohio amnesty program guidelines will be issued around November. We also understand that the Ohio voluntary disclosure program will remain open during the Ohio amnesty program. As a result, taxpayers should determine which program provides the best results for their specific facts and circumstances. When more information is released, we will update this SALT Buzz.

Oklahoma:

The Oklahoma Voluntary Disclosure Initiative will begin on September 1, 2017 and continue until November 30, 2017. The Oklahoma Voluntary Disclosure Initiative is discussed in our July 17, 2017 entry below. On August 8, 2017, the Oklahoma Tax Commission issued an informational notice discussing the Voluntary Disclosure Initiative and administrative rules for the Voluntary Disclosure Initiative. The informational notice summarizes the details of the Voluntary Disclosure Initiative, which are discussed in our July 17, 2017 entry below. The informational notice also highlights the requirement that the Voluntary Disclosure Initiative requires the preparation and filing of the delinquent returns. The completed returns and payment of tax due should be mailed to the Oklahoma Tax Commission, P.O. Box 269059, Oklahoma City, OK 73126-9059. The Oklahoma Tax Commission will allow taxpayers to enter into a payment plan and still participate in the Voluntary Disclosure Initiative. The informational notice and administrative rules can be viewed [here](#).

Rhode Island:

H.B. 5175 authorizes a Rhode Island tax amnesty program for all taxes administered by the Rhode Island tax administrator including sales/use tax, personal income tax, and corporate income taxes. The Rhode Island

tax amnesty program will run from December 1, 2017 through February 15, 2018. Participants will submit a written application and pay the underpaid tax liability and $\frac{3}{4}$ of the interest normally due by statute. Thus, participants will save $\frac{1}{4}$ of the interest normally due and penalties will be waived. A taxpayer may enter into a payment installment plan as part of the Rhode Island tax amnesty program.

Virginia:

The Virginia amnesty program is discussed in our February 26, 2017 and July 17, 2017 entries below. As of the time of this update, Virginia has not announced the timeframe for the Virginia amnesty program.

July 17, 2017

Ohio

Am. Sub. H.B. 49 authorized an Ohio tax amnesty program, the fourth tax amnesty program since 2002, and the second tax amnesty program under the Kasich Administration. The Ohio tax amnesty program will run from January 1, 2018 to February 15, 2018, and will apply to all delinquent state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes that were due as of May 1, 2017 and remain unpaid. The Ohio tax amnesty program is not available for taxes that have been formally assessed, for taxes that a bill has been issued or for taxes subject to an on-going or pending audit. The benefits of the program for participants will be elimination of all applicable penalties and payment of only half the interest that would otherwise be due. Additional details on the process of participating in the Ohio tax amnesty program are expected in the near future.

It is our understanding the Ohio Voluntary Disclosure Program will remain open before, after, and during the Ohio tax amnesty program. Thus, taxpayers should consider whether tax amnesty or voluntary disclosure provides the best result based upon their specific facts and circumstances.

Oklahoma

H.B 2380 authorized the Oklahoma Voluntary Disclosure Initiative program for most taxes administered by the Oklahoma Department of Revenue, including the income tax (for periods prior to January 1, 2016), sales/use tax, withholding tax, the gasoline and diesel tax, and the gross production and petroleum excise tax. The Oklahoma Voluntary Disclosure Initiative will run from September 1, 2017 to November 30, 2017. The program is limited to taxes that may be assessed within the last three years (i.e.,

the prior three years for calendar year taxes or thirty-six months for other taxes). Participants will pay the underpaid tax liability and will not be required to pay any interest or penalties. District Court approval of interest and penalty waivers in excess of \$10,000 will not be required under the Oklahoma Voluntary Disclosure Initiative program.

In order for a taxpayer to qualify to participate in the Oklahoma Voluntary Disclosure Initiative program, the following conditions must be met:

- The taxpayer must not have any outstanding tax liabilities besides those being reported;
- The taxpayer must not have been contacted by the Oklahoma Tax Commission regarding the reported taxes;
- The taxpayer must not have any collected and unremitted taxes at the time of the application; and
- The taxpayer must not have been a participant in an Oklahoma voluntary disclosure agreement within the preceding three years for the reported taxes.

Additionally, as part of the legislation authorizing the Oklahoma Voluntary Disclosure Initiative, a modified voluntary disclosure agreement process was authorized in which a complete interest waiver may be requested for situations in which unreported taxes may extend longer than three years.

Pennsylvania

The Pennsylvania amnesty program is now closed. Taxpayers that have unreported tax liabilities may consider whether the Pennsylvania voluntary disclosure program or use tax voluntary compliance program would be advantageous given the taxpayers specific facts and circumstances.

Virginia

The Virginia amnesty program is discussed in our February 26, 2017 entry below. As of the time of this update, Virginia has not announced the timeframe for the Virginia amnesty program. Virginia has released draft rules for the Virginia Amnesty Program that can be viewed [here](#).

February 26, 2017

Pennsylvania

The Pennsylvania tax amnesty program is for all taxes administered by the Pennsylvania Department of Revenue ("PA DOR"), including the corporate net income tax, employer withholding tax, personal income tax, and sales/use tax. Participants will pay the underpaid tax liability and one-half of the interest normally due. Thus, participants will save one-half of the interest and any penalties, including lien filing fees and collection agency fees that normally would have been due.

The tax amnesty period is scheduled for April 21, 2017 to June 19, 2017. Taxpayers must file an on-line amnesty application, file all required tax returns and make all required payments within the tax amnesty period. Therefore, it is important that interested taxpayers consider participating as soon as possible so taxpayers are prepared to provide all relevant returns and payments by June 19, 2017, or risk not being eligible to participate.

The tax amnesty program is open for state tax delinquencies, known and unknown by the PA DOR, as of December 31, 2015. The PA DOR will mail notices to taxpayers with known delinquencies prior to the tax amnesty program start date.

There are a number of limitations and restrictions to participating in the tax amnesty program including:

- With respect to taxpayer's with tax liabilities unknown to the PA DOR, there is a limited lookback period dating back to January 1, 2011.
- If a taxpayer participated in the 2010 tax amnesty program, then the taxpayer is not eligible to participate in the 2017 tax amnesty program. However, taxpayers that participated in the 1996 tax amnesty program are eligible to participate.
- Taxpayers that participate in the tax amnesty program waive the right to file for a refund for tax paid as part of amnesty or protest an amnesty return.
- Taxpayers participating in the voluntary disclosure program are bound by the terms of the voluntary disclosure agreement and are not eligible for a reduction in interest.

If a taxpayer is eligible to participate in the amnesty program, but elects to not participate, a five percent non-participation penalty will be applied to future tax assessments for the January 1, 2011 through December 31, 2015 period.

Taxpayers who can participate in the amnesty or the voluntary disclosure program should calculate the total cost (tax, penalty and interest) under each program to ensure the maximum benefit.

Virginia

Virginia enacted H.B. 2246 (effective July 1, 2017) that granted the Virginia Tax Commissioner the authority to create a tax amnesty program. Virginia Code Section 58.1-1840.2 provides the statutory authority for the tax amnesty program and outlines some basic rules for the tax amnesty program. The Tax Commissioner is required to develop detailed rules for the tax amnesty program.

At the time of this Buzz, the tax amnesty rules have not been published, however, the enacted statute does provide some guidelines including:

- The tax amnesty program is for all taxes administered by the Virginia Department of Taxation.
- Participants will have one-half of interest normally due waived and will not be required to pay any civil or criminal penalties associated with the tax underpayments.
- Participation may be limited depending on the timing of an existing assessment or investigations for filing fraudulent returns.
- The tax amnesty program will be conducted between July 1, 2017 and June 30, 2018 for a period of at least 60 days, but no longer than 75 days.
- Taxpayers that are eligible to participate in the amnesty program, but elect to not participate, are subject to a twenty percent penalty on future tax assessments.

An updated Buzz will be released once the tax amnesty program rules have been published.

South Carolina

South Carolina enacted S.B. 526 (effective June 8, 2015) that granted the South Carolina Department of Revenue ("SC DOR") the authority to create a tax amnesty program. S.C. Code Section 12-4-397 provides the statutory authority for a tax amnesty program and outlines the basic procedures, including the requirement that the SC DOR provide the South Carolina General Assembly a sixty day notice of such tax amnesty program. To date, the SC DOR has not used its power to create a tax amnesty program.

If you would like to discuss upcoming state tax amnesty programs or state voluntary disclosure programs, please contact [John Trippier](#), [Tom Fagan](#) or [any of the other professionals](#) at Zaino Hall & Farrin LLC.

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