

*“The successful man will profit from his mistakes and try again in a different way”*  
*- Dale Carnegie*

# STATE & LOCAL TAXES

The Benefits of a Voluntary Disclosure Agreement

*A White Paper by:*

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## WHAT IS A VDA?

When an individual or commercial taxpayer discovers that he/she/it has underreported, or unreported state or local taxes, oftentimes the most attractive resolution is to pursue a Voluntary Disclosure Agreement with that state and/or local government.

A Voluntary Disclosure Agreement, or VDA as it's commonly known, is a contract between a taxpayer and a state or local government offered through that state's Voluntary Disclosure Program. Voluntary Disclosure Programs are sponsored and administered by each state and, in some circumstances, local governments, and are designed to bring taxpayers with liabilities into compliance with the laws of that state and/or local government.

## WHAT ARE THE BENEFITS OF A VDA?

Benefits to taxpayers utilizing a VDA vary by state and underlying facts. In many states, the taxpayer can actually remain anonymous until it is granted preliminary approval to participate in the program. Once permission is granted and the identity of the taxpayer must be disclosed, the resulting benefits of a VDA to the taxpayer often involve a combination of the following:

- Limitation Of The Prior Look-Back Period - Usually the look-back period is limited to between 3 and 5 years as opposed to having no statute of limitations if a return has never been filed
- Abatement Of Penalties - Most states will waive penalties on any prior period taxes that are remitted in connection with a VDA
- Full Or Partial Interest Abatement - A limited number of states will abate interest in full; many states apply a reduced interest rate
- Friendlier Sales And Use Tax Audit - While state taxing authorities typically reserve the right to audit taxpayers who come forward pursuant to a VDA, the audit will generally focus more on understanding and confirming the reasonableness of the taxpayer's liability
- Brings Closure To Prior Periods - prior period liabilities are closed, concentrating compliance efforts on current and future periods.

## MAXIMUS CASE STUDY

### MAXIMUS Secures Significant Tax Reduction Settlements for ENERGY COMPANY

#### OVERVIEW

ENERGY COMPANY based in Texas collected sales tax on products sold to oil & gas customers over a ten (10) year period. Total tax collected exceeded \$1MM.

#### SITUATION

ENERGY COMPANY discovered that it had failed to remit any of the sales tax collected to the proper authority and was in the process of using the amnesty program with the State of Texas.

#### CHALLENGES

- By collecting but failing to remit sales tax, ENERGY COMPANY had unknowingly breached a fiduciary duty
- Client did not know that a majority of the sales tax collected was actually not due the State of Texas.

#### PROCESS

ENERGY COMPANY engaged MAXIMUS to confirm that its remittance strategy via Texas' amnesty program was sound. MAXIMUS performed a detailed analysis of all underlying sales transactions and concluded the following:

- Less than 15% of the sales taxes collected were actually owed to the State of Texas.
- More than 85% of the sales taxes collected but not remitted were actually due the State of Louisiana and eight (8) Louisiana Parishes.

#### MAXIMUS RESULTS

ENERGY COMPANY was properly brought into compliance with all ten (10) pertinent jurisdictions and suffered no ramifications from its inadvertent breach of its fiduciary trustee duties.

In fact, *as a result of the settlements secured by MAXIMUS, ENERGY COMPANY was able to pay all tax monies due without incurring any out-of-pocket expense for MAXIMUS services.*

*"Our company recognized significant benefit working with MAXIMUS; they led us through the VDA process and brought us into compliance, satisfying the State."*

*- Manufacturing Client*



## A STATE'S PERSPECTIVE

In Texas, a VDA provides a number of benefits to taxpayers that make it a smart idea, especially when contrasted with the possible costs that could be assessed outside the program (i.e. audit).

The State of Texas profits from the VDA process as well. Not only does a VDA allow the state to generate additional revenue that may not have been received otherwise, but it also provides an avenue to register companies in the state to collect and remit future taxes.

VDA ADVANTAGES IN TEXAS	VDA	No VDA
Look Back Period for Tax Liability	4 Years (except where tax was collected but not remitted)	7 Years
Statutory Penalties	Waived	10% of tax due
Interest	Waived (on taxes disclosed and paid but not collected)	Annually adjusted rate based on prime rate + 1%
Prior Period	Closed	Open

### SEVERAL POINTS SHOULD BE KEPT IN MIND BEFORE BEGINNING THE VDA PROCESS:

#### TAX REPRESENTATIVE

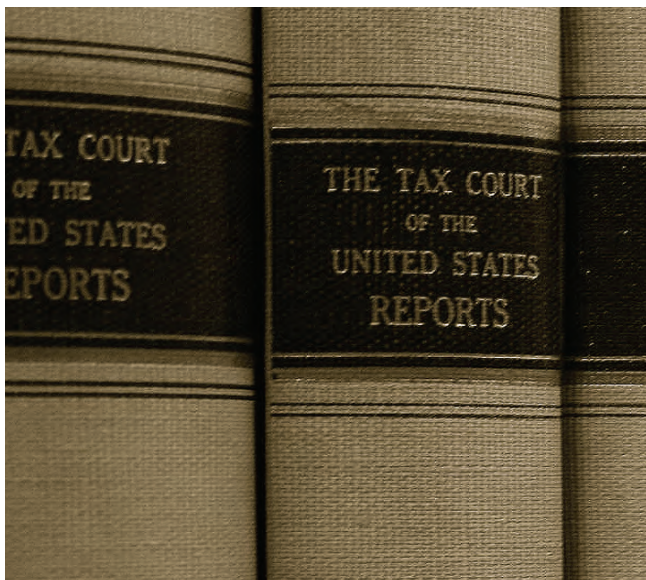
Although it is not necessary to use an attorney or CPA to participate in Texas' Voluntary Disclosure Program, it is advisable to have a tax professional contact the Comptroller on behalf of the noncompliant company. Having a professional make this contact on behalf of their "anonymous" client protects the company in the initial stages of the process.

#### TIMING

The entire VDA process is likely to take 4 – 6 months from the date the completed request is sent to the Comptroller's office to the company's final tax submission and payment. Proper planning is essential.

#### RISK OF AUDIT

Participating in the Voluntary Disclosure Program may increase the risk of an audit by the Texas State Comptroller. But, if the VDA has been correctly completed, taxes accurately calculated, and all outstanding liabilities paid, an audit should not present a problem.



## MULTI-STATE COMMERCE

VDAs should be considered by businesses involved in multistate commerce to voluntarily resolve potential state sales & use tax (SALT) issues where nexus is the central issue.

Multistate resolution can save time and money. The 33 jurisdictions below are members of the National Nexus Program and participate in the Multistate Voluntary Disclosure Program.

Alabama, Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Iowa, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Montana, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin & West Virginia

VDAs are contracts between taxpayers and local taxing authorities offered through that state's Voluntary Disclosure Program.

Voluntary Disclosure Programs are plans sponsored and administered by each state and designed to bring taxpayers with liabilities into compliance with that state's laws.

MAXIMUS regularly handles VDAs for clients across the country and would be happy to advise or assist you if you have, or believe you have underreported or unreported state tax liabilities.



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