

# Guide to Colorado's Voluntary Disclosure Program

In order to enter into a voluntary disclosure agreement, the Colorado Department of Revenue (DOR) requires that a Company provide certain information, representations, and warranties as explained in the information packet. These are set forth in an offer by the company called the "Statement of Representations and Inducement" (Exhibit A), and are more fully explained in the guide by that name. Briefly they are:

1. A description of the taxpayer's activities and the date the activities began;
2. An estimate of Colorado tax liability for previous tax periods;
3. A disclosure with respect to whether the Company has or has not collected the relevant taxes;
4. A representation that the Company has not been previously been contacted by Colorado or the Multistate Tax Commission ("MTC") nexus program;
5. A representation that the failure to file is not the result of fraud or gross negligence on the part of the Company (in the case of fraud or gross negligence the DOR is still, of course, willing to negotiate a settlement, but on much more rigorous terms).

A voluntary disclosure agreement request can be completed by performing the following steps.

**Step 1** Read the entire packet. A lot of the questions you may have will be answered

**Step 2** The "Agreement for Registration and Payment of Colorado State Taxes" will normally be filled out by the State after review of the Company's Exhibit A. The copy is provided on our website so you can review the standard agreement. The voluntary disclosure request may be submitted anonymously.

**Terms Paragraphs 3) & 4)** - The DOR will normally require a look-back period, whereby the Company will pay taxes covering a certain number of years past. The length of the look-back period or the DOR's requirement of one will depend on the nature of the Company's activities and the size of past years' potential tax liabilities as submitted in Exhibit A.

The DOR expects that a normal voluntary disclosure agreement will contain a provision for a look-back period of a minimum of three years for sales/use tax and a minimum of four years for income tax (corresponding to the respective statutes of limitations, as though returns had been filed).

If the tax nexus is so thin that the taxpayer believes prospective filing is justified, the department would prefer that the taxpayer simply register and go forward from that point. The department will almost never be willing to waive any past liability as part of a prospective filing.

**Paragraph 7)** - Whether penalties for taxes due for the period of non-filing are waived, and the extent of the waiver, will depend on the same issues that determine if the DOR will insist on a look-back period (i.e., the certainty of the nexus and the size of the liability), as well as the explanation for the failure to file as stated in Exhibit A. Penalty will normally be assessed, sometimes at a lower rate, if tax was collected, but not remitted.

Interest on monies due for taxes for the look-back period will not be waived.

**Step 3** Complete an Exhibit A for the company. Be sure to answer all questions and submit all facts as requested in the "Guide to Statement of Representations and Inducement" (Exhibit A). Please be specific. Vagueness or ambiguity will only hinder our attempt to determine the company's liability and reach an agreement

**Step 4** Complete an Exhibit B. Check the tax liabilities which the company wishes to settle.

Severance taxes will not generally be covered by this voluntary disclosure agreement. Because of public policy concerns, liquor licensing and registration and liquor taxes will also not be covered by this voluntary disclosure agreement. Instead, a negotiation directed specifically toward severance taxes or liquor taxes and licensing may be required.

No loss carry forward for losses realized in any year before the first year filed pursuant to this agreement will be allowed for any filing period covered by this agreement or periods after this agreement.

We hope these guidelines answer most of your questions about the Department's policy with respect to voluntary disclosure agreements and hope that the Company will see fit to proceed with the agreement.

If you wish to enter into a voluntary disclosure agreement, please submit an Exhibit A and Exhibit B and send them to the address at the bottom of this page.

After we review the offer, if everything is satisfactory, we will complete an Agreement for Registration and Payment of Colorado State Taxes, sign the agreement and mail it to you. The signed agreement will include the voluntary disclosure number. We will send the necessary registration forms for the company to fill out with the signed agreement.

At that point the company should sign the original agreement, include the Company name, fill out any registration forms, keep a copy, and return the originals to us. You would then begin to comply with the terms of the agreement. Once the identity of the company is known to us, if contact regarding the agreement should be made through a representative (CPA, lawyer, etc.), please provide a Power of

Attorney.

If you have any other questions or concerns, please feel free to contact Sammy Khakame. When submitting documents for the voluntary disclosure program, please use the appropriate address below based on the method of mailing. Send directly to the attention of Sammy Khakame. Email is also accepted at [samwel.khakame@state.co.us](mailto:samwel.khakame@state.co.us).

<b>Federal Express, UPS or another courier:</b> Colorado Department of Revenue Attn: Sammy Khakame 1375 Sherman Street, Room 634 Denver, CO 80203	<b>USPS</b> Colorado Department of Revenue TAC – Annex, Rm 634, Attn: Sammy Khakame PO Box 17087 Denver CO 80217-0087
---	---

Please note that this packet does not constitute an offer.