

701—19.6(421) Voluntary disclosure agreements.

19.6(1) *When to file.* Any person who is subject to Iowa tax or tax collection responsibilities may be eligible for the voluntary disclosure program. Being subject to Iowa tax may occur when a person has Iowa source income, business activities, or representatives or other presence in Iowa. Certain activities by such persons may create Iowa tax return filing requirements for Iowa source income. In addition, activities may also result in tax liabilities that are past due and owing.

19.6(2) *Purpose of the voluntary disclosure program.* The purpose of the voluntary disclosure program is to promote effective tax administration through voluntary compliance by encouraging unregistered business entities and persons to voluntarily contact the department regarding unreported Iowa source income or other Iowa taxes described in subrule 19.6(4).

19.6(3) *Anonymity.* A person or the person's representative may initially contact the department on an anonymous basis. Anonymity of the taxpayer can be maintained until the voluntary disclosure agreement is executed by the taxpayer and the department. The voluntary disclosure program may be used by the department and the taxpayer to report previous periods of Iowa source income and to settle outstanding tax, penalty and interest liabilities, but it must also ensure future tax compliance by the taxpayer.

19.6(4) *Type of taxes eligible.* Only taxes, penalties, and interest related to the following tax types are eligible for settlement under the voluntary disclosure program: corporate income tax, franchise tax, fiduciary income tax, withholding income tax, individual income tax, composite return tax, local option school district income surtax, state sales tax, state use tax, fuel taxes, cigarette and tobacco taxes, local option tax, state and local hotel and motel taxes, automobile rental excise tax, equipment excise tax, water service excise tax, and the prepaid wireless 911 surcharge.

19.6(5) *Eligibility of the taxpayer.* The department has discretion to determine who is eligible for participation in the voluntary disclosure program. In making the determination, the department may consider the following factors:

- a. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities;
- b. The person must have tax due;
- c. The person must not currently be under audit or examination by the department or under criminal investigation by the department;
- d. The person must not have had any prior contact with the department or a representative of the department that could lead to audit or assessment associated with the tax types or tax periods sought to be addressed under the program;
- e. The type and extent of activities resulting in Iowa source income;
- f. Failure to report the Iowa source income or pay any liability was not due to fraud, intentional misrepresentation, an intent to evade tax, or willful disregard of Iowa tax laws; and
- g. Any other factors which are relevant to the particular situation.

19.6(6) *How to file an application.*

a. *Required format.* To apply, a taxpayer must submit an application in the department's prescribed paper or electronic format. A voluntary disclosure application can be submitted through GovConnectIowa or by using the form available on the department's website and following the submission instructions on the form.

b. *Required information.* A voluntary disclosure application must be submitted using the department's form.

c. *Review of the application.*

- (1) After the application is submitted, it will be reviewed by department staff.
- (2) Additional information may be requested to assist the department in its review.
- (3) The department will notify an applicant in writing regarding whether the applicant's application for participation in the program is accepted or rejected.

19.6(7) *Terms of the voluntary disclosure agreement.*

a. *Discretion.* The department has the discretion to settle any outstanding Iowa tax, penalty, and interest liabilities of the eligible applicant. Settlement terms are on a case-by-case basis. Items

considered by the department in determining the settlement terms include: the type of tax, the tax periods at issue, the reason for noncompliance, whether the tax is deemed to be held in trust for the state of Iowa, the types of activities resulting in the tax, the frequency of the activities that resulted in the tax, and any other matters which are relevant to the particular situation.

b. Maximum scope of audit. If a taxpayer initiates the contact with the department and is eligible for the voluntary disclosure program and complies with the agreement terms, the maximum prior years for which the department will generally audit and pursue settlement and collection will be five years, absent an intent to defraud, the making of material misrepresentations of fact, or an intent to evade tax.

c. Future filing requirements. All voluntary disclosure agreements must require that the applicant file future Iowa tax returns, unless the activity by the applicant resulting in the Iowa source income has changed or there has been a change in the law, rules, or court cases that dictate a different result.

d. Audit and assessment rights. The department reserves the right to audit all returns and other documents submitted by the applicant or a third party to verify the facts and whether the terms of the voluntary disclosure agreement have been met. The department may audit information submitted by the applicant at any time within the allowed statutory limitation period. The department may also assess any tax, penalty, and interest found to be due in addition to the amount of original tax reported. The statute of limitations for assessment and statute of limitations for refunds begin to run as provided by law.

19.6(8) Commencement of the voluntary disclosure agreement. The voluntary agreement commences on the date the voluntary disclosure agreement is fully executed by all parties or another date specified by the agreement. Execution of the agreement is complete when the agreement is executed by the taxpayer or taxpayers and the bureau chief of the compliance section of the tax management division or another staff member designated by the director. Prior to the execution of the voluntary disclosure agreement by the taxpayer and the department, the taxpayer is not protected from the department's regular audit process if the identity of the taxpayer, as an applicant, is unknown to the department. However, if the department has knowledge of the taxpayer's identity, as an applicant, the department will not take audit action against the taxpayer during the voluntary disclosure process. If a voluntary disclosure agreement is not reached, the department may assess tax, penalty, and interest as provided by law at the time the identity of the applicant becomes known to the department.

19.6(9) Voiding a voluntary disclosure agreement.

a. Authority. The department has the authority to declare a voluntary disclosure agreement null and void subsequent to the execution of the agreement. The department may void the contractual agreement if the department determines that a misrepresentation of a material fact was made by the person or a third party representing the person to the department. The department may also void a voluntary disclosure agreement if the department determines any of the following has occurred:

- (1) The person does not submit information requested by the department within the time period specified by the department, including any extensions granted by the department;
- (2) The person fails to file future Iowa returns as agreed to in the voluntary disclosure agreement;
- (3) The person does not pay the agreed settlement liability within the time period designated by the department, including any extensions of time that may be granted by the department;
- (4) The person does not remit all taxes imposed upon or collected by the person for all subsequent tax periods and all tax types that are subject to the voluntary disclosure agreement;
- (5) The person fails to prospectively comply with Iowa tax law. Whether the person has failed to prospectively comply with Iowa tax law is determined by the department on a case-by-case basis;
- (6) The person, based on a determination by the department, materially understates the person's tax liability; or
- (7) The person has made a material breach of the terms of the voluntary disclosure agreement.

b. Audit rights. Voiding of the agreement results in nonenforceability of the agreement by the applicant and allows the department to proceed to assess tax, penalty, and interest for that person's Iowa tax and tax collection responsibilities for all periods within the statute of limitations. If the applicant is justifiably rejected for the voluntary disclosure program or the agreement between the person and the department is declared by the department to be null and void, the department reserves the right to audit all returns or other documents submitted by the applicant or a third party on behalf of the applicant and

to make an assessment for all tax, penalty, and interest owed. If the voluntary disclosure agreement is voided or the application for the program is rejected and the department issues an assessment, the taxpayer may appeal the assessment pursuant to 701—Chapter 7. If the department does not issue an assessment, but does reject the application or voids the agreement, such action is not subject to appeal under 701—Chapter 7 but is considered to be “other agency action.”

19.6(10) *Partnerships, partners, S corporations, shareholders in S corporations, trusts, and trust beneficiaries.* Once the department has initiated an audit or investigation of any type of partnership, partners of the partnership, S corporations, a shareholder in an S corporation, a trust, or trust beneficiaries, the department is deemed to have initiated an audit or investigation of the entity and of all those who receive Iowa source income from or have an interest in such an entity for purposes of eligibility for participation in the voluntary disclosure program.

19.6(11) *Transfer or assignment.* The terms of the voluntary disclosure agreement are valid and enforceable by and against all parties, including their transferees and assignees.

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