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# State Tax Return

## MTC Tax Shelter Program Gives Taxpayers the Opportunity to “Come Clean”

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The Multistate Tax Commission (“MTC”) has instituted a Voluntary Compliance Program (“VCP”) for taxpayers who have participated in transactions that have been or may be deemed abusive. For a limited time, taxpayers may report such transactions to as many as 23 states through a single point of contact at the MTC. The VCP offers benefits in the form of reduced penalties and a less administratively burdensome procedure.

To participate in the VCP, taxpayers must deliver (not merely postmark) to the MTC by October 1, 2007 the MTC-VCP form, state tax returns, IRS Form 8886 and payment of taxes due on the state tax returns. The taxpayer may but is not required to include applicable interest (and penalty, if any). The states will issue a bill for any applicable interest (and penalty, if any).

The 23 states currently participating in the VCP are: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Iowa, Massachusetts, Missouri, Montana, New Jersey, Oklahoma, Oregon, Rhode Island, Texas, Utah, Vermont, Washington, and Wisconsin.

### ***Eligibility***

Taxpayers are eligible to participate in the VCP for any tax periods beginning before January 1, 2006. The VCP is available to taxpayers that either filed a return in a participating state utilizing a tax shelter or failed to file a return as a consequence of participation in a tax shelter. Taxpayers who did not file in the appropriate jurisdiction for reasons other than participation in an abusive tax shelter may wish to consider participating in a more generous voluntary disclosure program.

The taxpayer must describe in detail how the deemed tax shelter works including applicable code sections, if appropriate. If sufficient detail is not provided, taxpayers will have an additional opportunity to provide information to permit the state’s understanding of the abusive tax shelter.

Taxpayers must also provide the names and addresses of persons and organizations that sold or promoted the tax shelters and must irrevocably waive all rights to appeal (or file a claim for refund) with respect to tax paid as a result of filing the VCP returns.

### ***The Extent of Penalty Abatement Differs by State***

The benefits provided by states participating in the VCP vary with respect to the extent they will abate penalties under the program. Most states will waive or abate all penalties that could be assessed against the participating taxpayer.

Some states offer limited penalty abatement benefits. New Jersey will waive only late filing and late payment penalties and Texas will waive only late penalty (but not interest) on franchise tax returns voluntarily amended due to a disclosed tax shelter.

### ***Confidentiality***

While taxpayers can choose to participate in the VCP, any information acquired by the MTC through the VCP (and information sharing among taxing authorities) will be available to all participating states and the Internal Revenue Service (“IRS”). Tax information sharing agreements also exist between participating states and non-participating states. The lack of confidentiality is a notable difference from the MTC’s voluntary disclosure program that may deter taxpayers not desiring to disclose potential liability to all states.

### ***Nonparticipating Taxpayers Beware!***

Deciding to forgo participation in the VCP may be a risky undertaking, particularly for taxpayers who have reported tax shelters to the IRS or other states. The MTC has made it clear that after the conclusion of the program, participating states will share information on eligible taxpayers that did not take advantage of the VCP. This assertion by the MTC may not be a hollow threat. At least 48 states, the District of Columbia, New York City, the Virgin Islands and Puerto Rico have signed agreements with the IRS for the purpose of sharing information regarding taxpayers who have utilized abusive tax avoidance transactions.

Based on information already obtained, the MTC has invited some people to participate in this program. If you get a letter inviting you to participate and don’t respond, that information will be shared. If you participated in California’s or New York’s voluntary compliance program, but did not report to other jurisdictions, expect to be contacted by other jurisdictions. The bottom line is that taxpayers who previously participated in a voluntary compliance program or filed a return disclosing an abusive tax avoidance transaction should give strong consideration to participation in the VCP.■



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