



VDA POLICY NOTICE



DISCLOSED TEST
200 ARLINGTON ST
CHELSEA MA 02150-2375

Why did you receive this notice?

You applied for consideration under the Massachusetts Department of Revenue ("DOR") Voluntary Disclosure Program ("VDA"). The following is general information regarding voluntary disclosures of tax liabilities for past tax periods. For additional information, visit our website at www.mass.gov/dor and search "VDA".

If you provided the taxpayer information on MassTaxConnect ("MTC") and meet all VDA requirements detailed here, no further action is necessary unless we ask for additional information to complete our review of your application.

What should I do?

You must respond by August 13, 2021. DOR requires that you provide the name and the identification number(s) of the taxpayer within sixty days of the date of your VDA submission or you will not be considered as coming forward voluntarily under the anonymous inquiry.

Review this notice carefully. The General Policies applicable to VDA and Procedural and Filing Requirements are explained on the following pages.

Note that DOR may contact you by email or by phone to request additional information necessary to process your application.

What happens if I don't respond?

If you don't provide the name and identification number(s) of the taxpayer by August 13, 2021, your application will be closed, and you'll need to submit a new request.



VDA General Policies

DOR appreciates all efforts of taxpayers to come into voluntary compliance with the Commonwealth's tax laws. The general rules for voluntary disclosure and customary "look-back periods" applicable to different factual situations are discussed in detail in **Technical Information Release ("TIR") 11-1**, which is available on the [mass.gov/dor](https://www.mass.gov/dor). The information below outlines the general principles and procedures that the Department typically will follow in voluntary disclosure cases, absent unusual circumstances.

Key points regarding DOR audit policy and Massachusetts tax law:

- Acceptance of a taxpayer in the Voluntary Disclosure program is entirely discretionary on the part of DOR. Some fact patterns may not be appropriate for VDA treatment.
- DOR does not generally enter into written agreements regarding voluntary disclosure.
- A waiver of penalties cannot be agreed to in advance. All penalty waiver requests are reviewed by DOR taking into account the particular facts of the case after the identity of the taxpayer is disclosed. Considerable weight is given to the fact that a taxpayer has come forward voluntarily to file back tax returns, provided that the taxpayer: (1) submits tax returns that are in order; (2) has had no previous contact with DOR; (3) in the case of a trustee tax, the taxpayer did not collect the tax at issue; and (4) had limited in-state contacts.
- To obtain a **waiver of penalties** the taxpayer must demonstrate reasonable cause for its non-compliance. *See* Administrative Procedure 633, available on [mass.gov/dor](https://www.mass.gov/dor), for examples of "reasonable cause." The only penalties that are waived in the context of voluntary disclosure are the late file penalty (*see* **M.G.L. c. 62C, § 33(a)**) and the late pay penalty (*see* **M.G.L. c. 62C, § 33(b)**). However, a late pay penalty may still apply even where a VDA application has been approved for a penalty waiver, if any part of the original tax and interest assessment remains unpaid after the original billing period.
- **Interest** is statutory and cannot be waived, revised or reduced. The applicable interest rate is the federal short term rate plus four percentage points. This rate changes quarterly and is announced by DOR through the form of a TIR.
- **Penalties for underpayment of estimated tax** for corporate excise and personal income tax are statutory additions to tax (calculated like interest) and **cannot be waived through the VDA program**. These penalties apply to corporate taxpayers for tax years where the tax liability is greater than \$1,000 and to individual taxpayers for tax years where the personal income tax liability is greater than \$400. *See* **M.G.L. c 63B, § 3 (pertaining to corporate tax)** and **M.G.L. c. 62B, § 14 (personal income tax)**.
- Some non-resident individual taxpayers and non-domiciliary corporations may qualify for a **three-year look-back** period commencing on the date that the taxpayer or its representative first contacted the Department. *See* **TIR 11-1**.



In trustee tax cases (i.e., sales/use tax, meals tax, withholding tax, etc.) where the tax was actually collected in whole or part, the taxpayer must file returns for all periods where the tax was collected, regardless of how far back that period extends. **In cases where the tax was collected and not remitted, penalties are generally not waived.**

- **In corporate excise cases**, the three-year look-back rule will not apply in any instance in which the corporation clearly established nexus prior to such three year period. In such cases, the look-back period will extend back at least to such earlier time. **See, TIR 11-1, Example 8.**
- DOR does not waive the right to audit returns after they are filed, regardless of tax type. The filed returns are subject to a three-year statute of limitations for purposes of audit from the date they are filed. This period is six years in certain instances in which the taxpayer has understated income or omitted assets from a return. **See M.G.L. c. 62C, § 26.**
- DOR does not have the authority to provide immunity from a **criminal proceeding**, although criminal proceedings are rare in the context of a VDA.
- If the taxpayer that is applying for voluntary disclosure is a **related entity** of another person or entity that has been contacted by DOR or is currently under audit, the taxpayer must disclose that fact as part of its voluntary disclosure application. Failure to do so will be treated as a material misrepresentation that may result in the assessment of additional periods by DOR.
- Any material misrepresentation on the part of the taxpayer will void its application, in which case DOR may assess additional tax periods.

Procedural and Filing Requirements

Taxpayers applying for voluntary disclosure for one tax type should consider whether there are any other tax issues that need to be addressed. For instance, a business entity might be responsible for withholding tax, sales/use tax, meals tax and/or the corporate excise. All corporate applicants regardless of the account types for which they are applying are required to submit a Massachusetts Activity Questionnaire (MAQ) found at www.mass.gov/service-details/voluntary-disclosure-program, to help DOR determine if/when nexus for corporate excise and/or sales/use tax was established for such corporation. If additional tax requirements are identified through the MAQ and the corporate taxpayer wishes to go forward with the VDA application, compliance with all tax obligations will be required.

Delinquent trustee tax returns must be filed according to these filing frequencies:

<u>Yearly Tax Liability</u>	<u>Return Type Required</u>
\$1-\$100	Annual
\$101-\$1200	Quarterly
\$1201 – or more	Monthly



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Note: Although they are not required at this time, in the case of sales or use tax, exempt and/or resale certificates may be required at a later date to substantiate any exempt sales or sales for resale.

Tax forms for prior years are available on the DOR website at mass.gov/dor/forms however, taxpayers are required to comply with all DOR electronic filing requirements, if electronic options are available. Paper returns for tax periods and tax types that are required to be electronically filed will only be accepted if electronic filing is no longer supported. Taxpayers can comply with electronic filing requirements by filing on MassTaxConnect or through third-party software.

- Amended tax returns are **not** accepted in the Voluntary Disclosure Program.
- Spreadsheets are not an acceptable method of filing

If you are a representative of the taxpayer, such as an attorney, CPA, EA or tax preparer, please provide an executed **Power of Attorney** in order for us to discuss the taxpayer's application with you. The **Form M-2848: Power of Attorney and Declaration of Representative** is available online at mass.gov/lists/dor-administrative-forms.

What if I have questions?

If you have questions, please contact the VDA Unit by sending an e-message through MTC at mass.gov/masstaxconnect or call us at (617) 887-6725.

You may also send written correspondence to the Business Income Tax Bureau, VDA Unit, Massachusetts Department of Revenue, 200 Arlington St RM 4300 Chelsea, MA 02150.

When you contact us by e-message or by letter, include the Letter ID that appears in the upper right-hand corner of each page of this letter.

We look forward to working with you in resolving the taxpayer's filing obligations with the Commonwealth of Massachusetts.