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## Department of Revenue

About DOR

[Home](#) > [Businesses](#) > [Help & Resources](#) > [Legal Library](#) > [Administrative Procedures](#) > [AP 637: Voluntary Disclosure Program](#)

# AP 637: Voluntary Disclosure Program for the Settlement of Uncertain Tax Issues

## 637.1 Introduction

The Voluntary Disclosure Program for the Settlement of Uncertain Tax Issues (the "Program") is a pilot program intended to provide taxpayers with the opportunity to come forward voluntarily to disclose and propose settlement of uncertain tax issues. The pilot program is currently open to business taxpayers.

The Department of Revenue (the "Department") is committed to resolving tax disputes in a fair and expeditious manner. The Department likewise is committed to encouraging voluntary compliance with the Commonwealth's tax laws. The Department is aware that in the course of preparing its tax return(s), a taxpayer may identify an issue(s) for which the proper tax treatment is uncertain. Generally, an "uncertain tax issue" is one for which there is no clear statutory guidance or controlling case law, and which has not been addressed by the Department in a regulation, letter ruling, or other public written statement. Further, the issue must not have been addressed as part of a prior audit of the taxpayer, a prior application for abatement or amended return filed by the taxpayer, or a prior ruling request made by the taxpayer. An "uncertain tax issue" may be a purely legal issue, or an issue that is fact intensive and to which the application of established law is unclear. Generally, an "uncertain tax issue" is one for which a taxpayer would be required to maintain a reserve in accordance with ASC 740: Accounting for Uncertainty in Income Taxes (formerly FIN 48).

The Program is designed to offer a process through which uncertain tax issues may be resolved on an expedited basis, generally within four months. However, the Department retains the discretion to determine that the Program is not appropriate for specific cases.

## 637.2 Eligibility

The Program is available to business taxpayers for tax returns filed pursuant to G.L. c. 62C, §§ 11, 12, or 16, and which are open for assessment under the provisions of G.L. c. 62C, § 26.

Generally, the total amount of any potential tax liability attributable to the uncertain tax issue(s) must be \$100,000 or more, exclusive of interest and/or penalties.

Tax returns which are currently under audit or for which the taxpayer has received notice of an impending audit are not eligible for the Program.

The Department will consider settlement of an uncertain tax issue(s) where: (1) the taxpayer has presented its position on the issue(s) and the Department agrees that the tax treatment of the issue(s) is uncertain; and (2) the taxpayer has fully disclosed and documented the issue(s) and the facts associated with that issue(s).

## 637.3 Procedures

### 637.3.1 Application Process

#### 637.3.1.1 Initial Evaluation

Initially, a taxpayer may contact the Department on an anonymous basis to identify and explain the uncertain tax issue(s) for which it seeks resolution. The Department will review the information provided and make a determination as to whether it is appropriate to commit resources to the matter and to attempt to negotiate a settlement of the uncertain tax issue(s).

To initiate the process, the taxpayer's authorized representative should submit a letter to the Department requesting voluntary disclosure and settlement of an uncertain tax issue(s) in accordance with AP 637.

The letter should be addressed to:

Massachusetts Department of Revenue  
Voluntary Disclosure Unit  
200 Arlington Street, Room 4300  
Chelsea, MA 02150

The letter should include the following:

- A statement of the relevant facts and an explanation of the uncertain tax issue(s) that it seeks to resolve, including an explanation as to why the issue(s) is uncertain; and
- The tax period(s) in dispute and an estimate of the amounts in dispute by period.

The Department will review the information provided by the taxpayer and make a determination as to whether the matter is appropriate for inclusion in the Program. The information provided will be reviewed jointly by managers of the Audit and Resolution Divisions. Generally, the Department will complete its review within 30 days of receipt of the taxpayer's submission. Within this review period, the Department may contact the taxpayer's representative to seek additional information or otherwise discuss the uncertain tax issue(s). Upon completion of its review, the Department will notify the taxpayer's representative in writing as to whether the

matter has been accepted into the Program. Depending upon the situation, this notification may include a brief discussion of the uncertain tax issue(s), such as a summary of areas that the Department believes need further development.

If the matter is accepted into the program, the Department will agree to waive all penalties that may be imposed, including penalties that may be imposed under G.L. c. 62C, §§ 35A and 35D, with regard to the uncertain tax issue(s), provided that the taxpayer has acted in good faith in pursuing the transaction(s) or other matter (s) giving rise to the voluntary disclosure request and in presenting the facts, and analysis thereof, to the Department throughout the voluntary disclosure process.

If the Department agrees to accept the matter into the Program, the taxpayer will have 45 days from the date of the acceptance letter to decide whether it wishes to proceed with the Program. The taxpayer must notify the Department of its decision in writing within 45 days of the date of the acceptance letter.

#### **637.3.1.2 Application upon Acceptance into the Program**

If the taxpayer decides to proceed with the Program, it will be required to identify itself at the time that it notifies the Department of its decision. The taxpayer will also be required to provide the following information and/or documentation:

- A description of the taxpayer's business activities, including its business activities in Massachusetts;
- The tax period(s) at issue, the date on which the return(s) was filed, and a statement as to whether the tax period(s) is open under the three year statute (G.L. c. 62C, § 26(b)) or the six year statute (G.L. c. 62C, §§ 26(h) and (i));
- A calculation of the tax amount potentially in dispute by period, including a detailed explanation as to how the amount per period was calculated;
- A detailed explanation of the uncertain tax issue(s);
- A detailed description of the facts giving rise to the uncertain tax issue(s) in question;
- A position statement setting forth the taxpayer's legal analysis of the uncertain tax issue(s);
- Copies of all documents relevant to the uncertain tax issue(s) and facts in question;
- A statement as to whether the taxpayer or any of its affiliates has undergone any federal and/ or other state audits or proceedings which addressed the uncertain tax issue(s) and, if so, the outcome of the audits or proceedings with regard to the uncertain tax issue(s);
- A statement as to whether the uncertain tax issue(s) involves a listed transaction;
- A statement as to whether the uncertain tax issue(s) was raised or addressed during a past audit of the taxpayer or any of its affiliates by the Department;
- A statement as to whether the taxpayer or any of its affiliates previously contacted the Department regarding the uncertain tax issue(s) by means of a letter ruling request or other form of contact;
- A statement as to whether the taxpayer or any of its affiliates entered into any prior settlement agreement involving the uncertain tax issue(s) with the Department;
- A request for a conference, if desired;
- Contact information;
- **Settlement Proposal:** The letter should include a detailed proposal for settling the uncertain tax issue(s). The taxpayer's settlement proposal should take into consideration the impact, if any, that the proposed settlement may have on any net operating loss and/or credit carryovers. The taxpayer may include in its proposal a provision regarding the resolution of future tax periods. While the Department will consider the inclusion of such a provision in any potential settlement, the Department is not required under this Program to settle future tax periods; and
- **Signature(s):** The submission must be signed under the pains and penalties of perjury by an authorized individual, including a representative authorized under a Power of Attorney (Form M-2848). The submission must include the following attestation: "Under the penalties of perjury, I declare that to the best of my knowledge and belief, the facts presented in this request, and all accompanying statements and enclosures, are true, correct, and complete."

#### **637.3.2 Additional Documentation**

As part of its review of the taxpayer's voluntary disclosure and settlement request, the Department may ask the taxpayer to provide documentation in addition to that which was submitted with the taxpayer's request.

#### **637.3.3 Conference**

After receiving the voluntary disclosure and settlement request, the Department will schedule a conference, if requested by the taxpayer. In some cases, the Department may determine that a conference would be beneficial to its review of the taxpayer's request and schedule a conference, even if one has not been requested by the taxpayer. The conference may be conducted either in person at the Department's offices located in Boston, Massachusetts, or by telephone.

Conferences are informal and do not apply the rules of evidence or require testimony given under oath. No transcript or formal record of the proceedings is made. However, the Department may request that matters alleged as fact be stated under the pains and penalties of perjury.

Generally, a resolution will not be reached during the conference. After the conference, the Department will prepare a settlement recommendation which will include a summary of the information presented at the conference.

#### **637.4 Settlement Consideration**

##### **637.4.1 Settlement Recommendations**

Upon completion of its evaluation of the taxpayer's submission, the Department will prepare a settlement recommendation for review by the Settlement Review Board. The Settlement Review Board consists of the Senior Deputy Commissioner (or his/her designee, the Taxpayer Advocate), the General Counsel, and the Director of the Office of Appeals. Following its review, the Settlement Review Board will authorize the Department to pursue settlement on specified terms.

#### 637.4.2 Settlement Discussions

After a settlement recommendation has been reviewed and settlement terms approved, the Department will contact the taxpayer or its designated representative to discuss the case and negotiate a settlement.

As part of any settlement, the taxpayer may be required to file amended returns for the tax periods in question. For transaction taxes, spreadsheets would be acceptable.

#### 637.4.3 Completion of Settlement and Effect of Settlement Agreement

When the taxpayer and the Department have agreed to settlement terms, the taxpayer (or its designated representative) and the Department must sign a written settlement agreement reflecting those terms.

To the extent that the statute of limitations for assessment remains open, the Department may audit the taxpayer's returns for the period(s) in question. Generally, the Department will not make audit adjustments with regard to the issue(s) subject to the settlement agreement, except as otherwise may be provided in the terms of the agreement. However, as part of any audit, the Department may verify the calculation of the tax associated with the issue(s) subject to the settlement agreement, including the impact of any other adjustments the Department may propose for the tax period(s) at issue, and make appropriate adjustments.

Once a settlement agreement has been signed, the matter in question may not be reopened absent fraud, omission of a material fact, misrepresentation of a material fact, or mutual mistake relating to a material fact.

Additionally, settlements may not be regarded as precedent in any other matter, including other settlements, whether or not involving the same taxpayer.

#### 637.4.4 Settlement Not Reached

In the event that the parties are unable to reach an agreement, the voluntary disclosure case will be closed. The Department will issue a letter to the taxpayer or its authorized representative indicating that the voluntary disclosure case has been closed.

In the event that the parties are unable to reach an agreement, the Department will not be precluded from utilizing the information provided to it during the voluntary disclosure process for purposes of auditing the taxpayer's return(s) or defending any subsequent appeal of such an audit.

In the event that the taxpayer's return(s) for the tax period(s) at issue are audited and tax assessed with regard to one or more uncertain tax issues that were disclosed through the Program, any penalties that may otherwise be imposed, including penalties that may be imposed under G.L. c. 62C, §§ 35A and 35D, with regard to the uncertain tax issue(s) will be waived, provided the taxpayer acted in good faith in pursuing the transaction(s) or other matter(s) giving rise to the voluntary disclosure case and in presenting the facts, and analysis thereof, to the Department throughout the voluntary disclosure process.

In the event that the taxpayer's return(s) for the tax period(s) at issue are audited and tax assessed with regard to the uncertain tax issue(s) that was disclosed through the Program, all administrative appeal options remain open to the taxpayer. In any subsequent appeal of such an audit, any conference or hearing request submitted to the Office of Appeals will not be assigned to any appeals officer who participated in the review of the taxpayer's voluntary disclosure and settlement submission.

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