

FREQUENTLY ASKED QUESTIONS ABOUT NEW YORK CITY SETTLEMENT PROCEDURES

1. What are the differences between the VCI and the Settlement Procedures?

- a. Under the Settlement Procedures, taxpayers cannot retain their protest rights or rights to request a refund of amounts paid.
Under the VCI, taxpayers can retain their protest rights under certain circumstances.
- b. Under the Settlement Procedures, taxpayers must reverse 100 percent of the tax shelter transactions and pay 100 percent of the tax and interest due as a result for all open years affected by the tax shelter transactions.
Under the VCI, taxpayers can participate for some years but not others.
- c. Under the Settlement Procedures, if the taxpayer is a partnership, limited liability partnership or limited liability company taxed as a partnership, the taxpayer and each of its members or partners that is a New York City business income taxpayer must participate.
Under the VCI, this is not required.
- d. Under the Settlement Procedures, taxpayers must meet the additional eligibility criteria described at FAQ #2.

2. Who is eligible to participate in the Settlement Procedures?

Taxpayers eligible to participate in the VCI also will be eligible to participate in the Settlement Procedures *if all of the following apply*:

- a. The taxpayer has not been convicted of a crime and is not a party to any administrative proceeding or civil or criminal litigation relating to the New York City tax that is the basis of the penalty for which relief is sought, unless, in the case of a pending administrative or civil proceeding, the taxpayer withdraws from the proceeding with prejudice.
- b. The taxpayer has applied for and been accepted under the VCI.
- c. If the taxpayer is a partnership, limited liability partnership or limited liability company taxed as a partnership, the partnership and each of its members or partners that is a New York City business taxpayer have met requirements a and b above.

3. What is a tax shelter transaction for purposes of the Settlement Procedures?

A "tax shelter transaction" (for purposes of the Settlement Procedures) is the same as a "tax avoidance transaction" (for the VCI).

4. When will the Settlement Procedures be available?

The Settlement Procedures will be available during the VCI period - October 1, 2005 to March 1, 2006.

5. What tax years and taxes can be settled under the Settlement Procedures?

New York City General Corporation Tax ("GCT"), Unincorporated Business Tax ("UBT"), and Banking Corporation Tax ("Bank Tax") liabilities arising out of tax shelter transactions can be settled for any tax year prior to January 1, 2005.

6. What penalties can be avoided by participating in the Settlement Procedures?

- **Deficiency due to negligence penalty.** See NYC Administrative Code §§11-525(b)(1) & (2) and 11-676.2(a) & (b).

In addition to the tax, an amount equal to 5% of the deficiency, plus an amount equal to 50% of the interest payable.

- **Deficiency due to fraud penalty.** See NYC Administrative Code §§11-525(f) and 11-676.6.

In addition to the tax, an amount equal to 50% of the deficiency, plus an amount equal to 50% of the interest payable.

- **Substantial understatement of liability.** See NYC Administrative Code §§11-525(j) and 11-676.11.

In addition to the tax, an amount equal to 10% of the amount of any underpayment attributable to such understatement.

- **Late filing and late payment penalties.** See NYC Administrative Code §§11-525(a) and 11-676.1(a)-(c).

In addition to the tax, generally an aggregate amount equal to 5% of the amount of tax not paid on or before the due date up to 25%.

7. Will I be subject to the late filing penalty and interest on any delinquent return filed under the Settlement Procedures?

If you file a tax return late, we will waive the late filing penalty on amounts owed under the Settlement Procedures attributable to the tax shelter transactions. However, you will be required to pay any interest due.

8. Does participation in the Settlement Procedures exempt me from criminal prosecution?

We will not initiate criminal action with respect to the tax shelter transactions reversed under the Settlement Procedures if you are eligible to participate and comply with all requirements.

9. If I am a tax shelter promoter or material advisor, am I eligible to participate in the Settlement Procedures?

No. Only taxpayers are eligible to participate in the Settlement Procedures.

10. Can I apply under the Settlement Procedures if I applied for and was granted amnesty under the 2003 New York City Tax Amnesty Program with respect to the same tax and period?

Yes.

11. Can I participate in the Settlement Procedures if I am currently under examination by the New York City Department of Finance?

Yes. If you are already under examination you can still participate. Immediately notify the auditor conducting the examination that you choose to participate.

12.If I already reached a final settlement with the New York City Department of Finance, or I have an outstanding final assessment or warrant, in connection with an examination of a tax shelter transaction, can I participate in the Settlement Procedures?

No. Once you have been finally assessed or reached a final settlement in connection with an audit of a tax shelter transaction, you are not allowed to participate in the Settlement Procedures for the same tax shelter transactions.

13.Can I participate if I am currently under IRS audit, or recently completed an IRS audit for a tax shelter transaction?

Yes. However, you must pay the full amount of tax and interest due resulting from a complete reversal of the tax shelter transactions for all open years affected by the transactions and waive any right to protest or request a refund with respect to such amounts, regardless of whether the IRS determination is final.

14.If I already paid penalties prior to the Settlement Procedures, can I apply under the Settlement Procedures and request a refund of those penalties paid?

No.

15.If I participate in the Settlement Procedures can I protest or request a refund with respect to any other item on the amended or original returns filed under the Settlement Procedures that is not related to the tax shelter transactions reversed on those returns?

Yes. Within the normally applicable limitations period, you may request a refund, or protest any assessment, of tax with respect to the amended or original returns filed under the Settlement Procedures that is **not** related to the tax shelter transactions.

16.What happens if I make a mistake in calculating the amount of tax and interest due as a result of reversing the tax shelter transactions reported on the amended or original returns filed under the Settlement Procedures?

If the Department of Finance determines that you have underreported the amount of tax or interest due under the Settlement Procedures, the Department will assess any additional tax and interest due as well as any applicable penalties on such additional amounts.

17.Are the original or amended returns filed under the Settlement Procedures subject to examination by the Department of Finance?

Yes.

18.What if I participate in the VCI but do not participate in the Settlement Procedures?

Taxpayers not participating in the Settlement Procedures are nevertheless required to comply with existing requirements to report to the Department of Finance any final New York State Department of Taxation and Finance change or correction. See *NYC Administrative Code §§11-519, 11-605.3 and 11-646(e)*.

19.Can I apply for the Settlement Procedures and retain my appeal rights?

No. Under the Settlement Procedures you must waive your appeal rights with respect to the tax liability resulting from reversing the tax avoidance transactions.

20.Can I file for an extension to participate in the Settlement Procedures if I need more time?

No. To participate in the Settlement Procedures you must file the required documents between October 1, 2005, and March 1, 2006.

21.How will I know if I have been accepted in the Settlement Procedures?

You will only be contacted if (i) your amended or original returns cannot be processed, (ii) you are ineligible, or (iii) more information is required. Otherwise, you have been accepted as filed. However, returns filed under the Settlement Procedures are subject to audit. (See FAQ #17)

22.Can I file a tax return under the Settlement Procedures reversing less than 100% of the tax shelter transaction?

No. As a condition of participating in the Settlement Procedures, you must file amended or original returns for **all** open years affected by the tax shelter transactions and pay 100 percent of the tax and interest due for those years resulting from a reversal of the entire transaction for each such year.

23.Can I still participate in the Settlement Procedures if I am involved in litigation against the law firm, accounting firm, and/or promoter that sold, designed, or recommended the tax shelter to me?

Yes.

24.How do I participate in the Settlement Procedures?

To participate in the Settlement Procedures, you must:

- Submit a copy of the VCI application, all amended or original returns, disclosure statements and any other documents submitted to the New York State Department of Taxation and Finance in connection with the VCI application.
- Submit signed amended New York City returns for the appropriate tax and for every open tax period affected by the tax shelter transactions that were the subject of the VCI application, or, if no City returns were filed, submit signed original returns for such tax and periods.
- Submit a signed closing agreement in the form attached to Finance Memorandum 05-7 or such other equivalent form as the Department of Finance may, in its discretion, accept.
- A taxpayer that is a partnership, limited liability partnership or limited liability company taxed as a partnership, must submit all of the above documents for itself and each of its members or partners that would be required to file a return under the UBT, GCT or Bank Tax with respect to its distributive share of income, gain, loss or deduction from the taxpayer. A copy of the taxpayer's federal tax return Form 1065, including all Schedules K-1 for each year covered by the Settlement Procedures, must be submitted.

All returns, forms, closing agreements, and checks should be sent to:

New York City Department of Finance
Desk Audit Unit
345 Adams Street, 7th Floor
Brooklyn, NY 11201
Attn: Voluntary Compliance

25. Will Finance accept faxed copies of the required documents?

Finance will accept copies of the documents submitted as part of the VCI application, but original signatures are required for both the closing agreement and any New York City tax returns, so these cannot be faxed.

26. Can I still participate in the Settlement Procedures if I don't have the ability to pay?

Yes. Although the Settlement Procedures require you to fully pay the tax liabilities and interest for all open years resulting from a reversal of the tax shelter transactions, if you do not have the ability to pay the full amount currently, you may enter into an installment payment agreement.

However, the burden is on you to establish the inability to pay based on full disclosure of all assets and income sources. Assuming that the New York City Department of Finance determines your inability to fully pay is genuine, and you owe at least \$800, you may enter into a payment agreement with the consent of the Commissioner of Finance. This will allow you to pay what you owe in installments.

For more information about payment agreements, [Link to Payment Plans for Business Tax] call the Collections Call Center at 212-440-5489 to make an appointment to speak with a representative at 66 John Street (in lower Manhattan).

27. Can I enter into an Offer in Compromise for amounts owed under the Settlement Procedures?

No.

28. Can I pay by electronic fund transfer (EFT)?

Yes.

29. Will the NYC Department of Finance share information with the IRS or New York State regarding taxpayers participating in the Settlement Procedures?

Yes. We have a long-standing sharing agreement with the IRS and New York State. The New York City Department of Finance collaborates with other taxing authorities to curtail tax shelters and transactions. Accordingly, the Department shares any information the IRS or other taxing authority is authorized to receive.