



M2K - USA Sales Tax Series

Voluntary disclosure agreement

ALERT #6

Foreword

Sales and Use tax compliance is a major challenge for businesses operating in the United States. Unlike many countries with a single national sales tax, US sales tax being a local levy, there are **thousands of taxing jurisdictions**. This means businesses must navigate a maze of different tax rates, taxability rules, filing schedules, and exemption requirements just to sell the same product in different states.

The complexity doesn't stop there. The **2018 Supreme Court Wayfair decision** changed the game by requiring businesses to collect and remit sales tax even if they have no physical presence in the state. Now, simply exceeding a certain number of sales or revenue in a state can trigger a tax obligation, making it even harder for remote sellers and online businesses to keep up. States have moved quickly to enforce these "economic nexus" rules, and the risk of audits and penalties for non-compliance is higher than ever. Further, certain states levy sales tax on enumerated services, which is unknown to many businesses operating in the United States.

M2K's US Sales Tax Series is designed to educate the readers/ businesses & simplify the complexities. In the series, we will explain how sales and use taxes work, when should you get registration, what are the compliances that would apply, etc.

Voluntary disclosure agreements



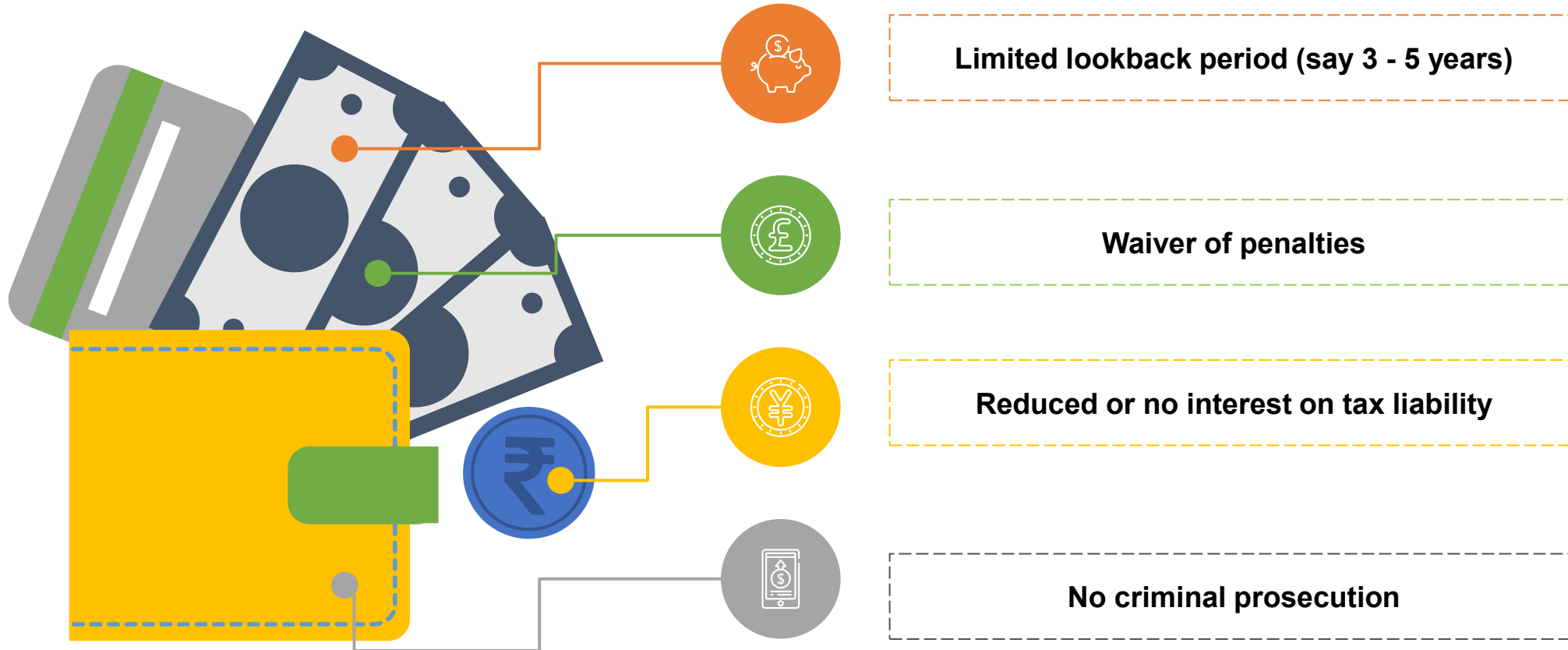
- ❖ Voluntary disclosure program (VDP) provides taxpayers with a mechanism to set right past non-compliances with the state authorities.
- ❖ Voluntary disclosure agreement (VDA) is a formal arrangement between the taxpayers and the state authority wherein taxpayers voluntarily disclose past non-compliances in exchange for favorable treatment.
- ❖ The benefits of applying through a voluntary disclosure program includes limited lookback period, waiver of penalties, reduced interest charges, no criminal prosecution, etc.
- ❖ VDAs are particularly useful for remote sellers who have triggered nexus through economic activity, service providers, etc.
- ❖ Each state administers its VDA program independently, with different rules, benefits, and timelines.

Eligibility conditions

Though the eligibility conditions vary from state to state, the conditions that may be applicable to taxpayers proposing to apply for a VDA are as follows:



Benefits of VDA



How does the VDA process work? (1/2)



- VDA application should be made in writing to the state authorities. Some states allow an anonymous application filed through an attorney / CPA, wherein the name of the applicant is not disclosed until the terms are finalized.
- The following information is generally required to be submitted as part of the application:
 - ☐ Entity type
 - ☐ Brief description of company's activities
 - ☐ Declaration that the taxpayer is eligible for VDA
 - ☐ Estimate of the amount owed
 - ☐ Period of non-compliance
 - ☐ Reasons for non-compliance
- The state authority reviews the application, may require additional information and determines whether to accept the taxpayer into the VDA program.
- If accepted, the state authority issues a proposed VDA outlining the terms, including the proposed lookback period and the penalty waiver.
- The taxpayer should sign and return the agreement to state authorities within the period specified.

How does the VDA process work? (2/2)

- The taxpayer should register under sales tax (if not registered already) and pay the taxes due, along with interest (if levied).
- Upon filing of returns and payment of taxes, the state authority reviews the same and provides confirmation that the liability is resolved.
- If the taxpayer misrepresents information or fails to comply, the VDA shall be void and full penalties and interest will be assessed.
- Generally, the VDA process may take 3 – 6 months, depending on whether the information has been furnished or not.
- A multistate VDA program can also be used which allows taxpayers with potential tax liabilities in multiple U.S. states to resolve those liabilities simultaneously through a single, coordinated application-typically facilitated by the Multistate Tax Commission.



Stay tuned for more updates on Sales & Use Tax

Please find below the list of alerts proposed to be released in the series (every Tuesday & Thursday). In case you have missed the previous alerts, click on the [hyperlink](#).

General overview

1. Introduction to sales & use tax
2. Situs of sale
3. Sales tax exemptions
4. Determining nexus
5. Registration & compliances
6. Voluntary disclosure agreements
7. Sales tax on software & SAAS

State wise overview

- | | | |
|----------------|--------------------|--------------------|
| 1. Delaware | 18. Kansas | 35. North Dakota |
| 2. New Jersey | 19. Kentucky | 36. Ohio |
| 3. California | 20. Louisiana | 37. Oklahoma |
| 4. Alabama | 21. Maine | 38. Oregon |
| 5. Alaska | 22. Maryland | 39. Pennsylvania |
| 6. Arizona | 23. Massachusetts | 40. Rhode Island |
| 7. Arkansas | 24. Michigan | 41. South Carolina |
| 8. Colorado | 25. Minnesota | 42. South Dakota |
| 9. Connecticut | 26. Mississippi | 43. Tennessee |
| 10. Columbia | 27. Missouri | 44. Texas |
| 11. Florida | 28. Montana | 45. Utah |
| 12. Georgia | 29. Nebraska | 46. Vermont |
| 13. Hawaii | 30. Nevada | 47. Virginia |
| 14. Idaho | 31. New Hampshire | 48. Washington |
| 15. Illinois | 32. New Mexico | 49. West Virginia |
| 16. Indiana | 33. New York | 50. Wisconsin |
| 17. Iowa | 34. North Carolina | 51. Wyoming |

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Thank You



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