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**Oklahoma Tax Commission
Voluntary Disclosure Initiative (VDI)
September 1, 2017 - November 30, 2017**

Waiver of Penalty and Interest Offered for Payment of Delinquent Taxes

The Oklahoma Tax Commission (OTC) has announced that it is offering a limited-time program to encourage the filing and payment of delinquent taxes. The program provides for waiver of all penalty and interest if certain types of delinquent Oklahoma taxes are paid in accordance with its requirements.

The Oklahoma Legislature enacted H. B. 2380 during the 2017 legislative session. It authorizes and directs the OTC to establish a Voluntary Disclosure Initiative (VDI).

VDI Program; Waiver of All Penalty and Interest; Limited Disclosure and Payment Time Period

An eligible taxpayer who voluntarily files and pays certain types of delinquent Oklahoma taxes during a period of *September 1, 2017 through November 30, 2017*, in accordance with the requirements of the VDI program, shall be entitled to a waiver of penalty and interest which would otherwise be due.

Penalty for non-payment of Oklahoma state taxes generally is 10% of the tax amount, and interest on late payment is imposed at a rate of 1.25% per month (15% annually). The combined amount of penalty and interest imposed on delinquent payment of tax can be substantial. Because of this very high interest rate in cases of extended non-compliance and failure to pay, the amount of penalty and interest may exceed the amount of tax due.

Thus, because the VDI program provides for *waiver of all penalty and interest* it may provide an opportunity for a taxpayer to achieve substantial savings while resolving liability for a delinquency of one or more of the types of tax covered by the program.

Eligibility and Conditions of VDI Program

The VDI program is available only to individuals and businesses who owe any specified *eligible* taxes for any tax period prior to September 1, 2017 (January 1, 2016 for income taxes). However, the VDI program is available only if the individual or business:

- Does not have outstanding tax liabilities other than those reported pursuant to the VDI program;
- Has not been contacted by the OTC or a third party acting on behalf of the OTC with respect to the potential or actual obligation to file a return and make a payment to the state;
- Has not collected the tax from others, such as sales or payroll taxes, and not reported those taxes; and
- Has not within the preceding three (3) years, entered into a voluntary disclosure agreement or amnesty program for the type of tax owed.

The VDI program therefore differs from some tax amnesty programs that have previously been offered to taxpayers in that those earlier programs provided relief for taxes about which a taxpayer may have already been contacted by the OTC for non-payment, or on which a proposed assessment had been sent to the taxpayer by the OTC.

The VDI program appears to apply only as to a tax delinquency on which no such contact has been made by and between the taxpayer and the OTC. It seems aimed at encouraging taxpayers to voluntarily come forward and make the initial contact about its delinquent taxes covered by the program and bring them to the attention of the OTC. In that situation, the taxpayer voluntarily filing of a tax return and paying the delinquent tax due in accordance with the requirements of the program can result in a required waiver of all penalty and interest that could otherwise have been collected by the OTC if it had discovered the non-payment and contacted the taxpayer about it first.

Taxes Eligible for VDI Program; OTC Tax Assessment Limit (Look Back) of Three (3) Taxable Years

The *eligible taxes* that qualify for the VDI program, and for which a waiver of penalty and interest will occur upon payment of the tax to the OTC, include mixed beverage tax, gasoline and diesel tax, gross production and petroleum excise tax, use tax and income tax. Sales and withholding taxes are eligible if they have not been collected from others.

The law and OTC rules on the VDI program provide that the OTC shall limit the period for which additional taxes may be assessed to three (3) taxable years for annually filed taxes or thirty-six (36) months for taxes that do not have an annual filing frequency. The OTC guidance on the program published in question and answer format asks a question: “How far back does the Voluntary Disclosure Initiative program apply,” and gives as the answer: “The Voluntary Disclosure Initiative looks back 3 years.” It still seems that it would be advisable for intended application and effect of this provision to be determined with more certainty before a taxpayer files under the VDI program if the taxpayer has a tax delinquency for more than three (3) taxable years.

In this regard, the statute of limitation for assessment of delinquent Oklahoma taxes generally provides that no assessment of any state tax by the OTC shall be made after the

expiration of three (3) years from the date the return was required to be filed or the date the return was filed, whichever period expires the later. The law further provides that in the case of a false or fraudulent return, with intent to evade tax, and in the case of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time. Finally, the law provides that in the case of a failure to file a report or return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

Required Tax Return Filing and Payment of Tax

The OTC published guidance on the VDI program states that participation in the program requires preparation and filing of the delinquent returns for eligible delinquent taxes with the OTC. The returns, along with payment of the eligible tax indicated due thereon, must be mailed to the OTC to ensure receipt by the OTC between September 1, 2017 and November 30, 2017.

If payment of unpaid delinquent taxes involved cannot be made in full, they can be paid through a six (6) month installment payment plan, provided the returns are filed and a down payment of 10% of the unpaid tax is made with a payment plan request during the September 1, 2017 through November 30, 2017, program initiative period.

VDI Program Limited in Application; A Taxpayer's Careful Review of Every Requirement and Condition of the Program is recommended

Individuals and businesses who believe they may qualify, and might want to use the VDI program, should consider all of the requirements very carefully before contacting the OTC or taking any action intended to start participation in the program.

The VDI program provides taxpayer relief only in accordance with the *specific detailed conditions* stated in the law, and the OTC published rules and guidelines.

Coming within those specific conditions and requirements may be subject to some uncertainty depending on the particular facts and circumstances involved for a taxpayer.

This includes the existence, nature and extent of any possible contact between the OTC and the taxpayer about an unpaid tax that may have already occurred prior to the taxpayer contacting the OTC about participating in the VDI program.

If the OTC determined that contact of the taxpayer by the OTC about the delinquent tax had in some way already occurred, the taxpayer might not qualify for a complete waiver of penalty and interest.

Also, if the taxpayer has outstanding Oklahoma tax liabilities other than the tax or taxes the taxpayer would like to report and pay pursuant to the VDI program, the taxpayer presumably will not qualify for the program and an automatic required waiver of all penalty and interest under the program.

The law and OTC rules provide for what seems to be a probationary period as to the waiver of penalty and interest. They provide that if the taxpayer fails to continue to properly pay the tax

involved fully and on time for one (1) year following a waiver of penalty and interest granted under the VDI program, that waiver will be cancelled and revoked and the interest and penalty will be reinstated.

The OTC rules on the VDI program state that generally a taxpayer who is currently in bankruptcy is not eligible for participation in the program.

If a taxpayer has delinquent tax due for more than three (3) taxable years, and no tax return has been filed for any year, and the taxpayer for some reason failed to meet all the requirements to qualify for the VDI program, the OTC might be able to assess and collect the delinquent tax due for all of the taxable years involved, along with full penalty and interest on it for that period.

In these situations, and possibly others that result in a taxpayer not meeting the conditions and requirements of the VDI program, the taxpayer would need to apply to the OTC to allow a waiver of penalty and interest under general rules governing waivers, which would be within the OTC's discretion. That could result in the taxpayer's intended or expected waiver of penalty and interest being denied, or allowed only in part, rather than complete waiver happening automatically upon payment of the tax as provided for under the VDI program.

Oklahoma Statute and OTC Rules on VDI Program

Copies of the statute and OTC Rules providing for the VDI program are attached.

If you have questions, please contact one of the Gable Gotwals attorneys listed below:

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68 O. S. §216.4 - Voluntary Disclosure Initiative

A. For the purpose of encouraging the voluntary disclosure and payment of taxes owed to this state, the Oklahoma Tax Commission is hereby authorized and directed to establish a Voluntary Disclosure Initiative for eligible taxes, as provided in this section. A taxpayer shall be entitled to a waiver of penalty, interest and other collection fees due on eligible taxes if the taxpayer voluntarily files delinquent tax returns and pays the taxes due during the disclosure initiative. The time in which a voluntary payment of tax liability may be made or the taxpayer may enter into a payment program acceptable to the Tax Commission for payment of the unpaid taxes in full in the manner and time established in a written payment program agreement between the Tax Commission and the taxpayer under the Voluntary Disclosure Initiative is limited to the period beginning September 1, 2017, and ending November 30, 2017.

B. Upon payment of the eligible taxes under the Voluntary Disclosure Initiative established, the Tax Commission shall abate and not seek to collect any interest, penalties or collection fees that would otherwise be applicable.

C. As used in this section, "eligible taxes" shall include the following taxes that were due and payable for any tax period or periods ending prior to entering into an agreement as provided in the initiative except as provided in this subsection:

1. Mixed beverage tax levied pursuant to Section 576 of Title 37 of the Oklahoma Statutes;
2. Gasoline and diesel tax levied pursuant to Section 500.4 of Title 68 of the Oklahoma Statutes;
3. Gross production and petroleum excise tax levied pursuant to Sections 1001, 1101 and 1102 of Title 68 of the Oklahoma Statutes;
4. Sales tax levied pursuant to Section 1354 of Title 68 of the Oklahoma Statutes;
5. Use tax levied pursuant to Section 1402 of Title 68 of the Oklahoma Statutes;
6. Income tax levied pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for tax periods ending prior to January 1, 2016; and
7. Withholding tax levied pursuant to Section 2385.2 of Title 68 of the Oklahoma Statutes.

D. To be eligible to participate in this initiative, taxpayers must:

1. Not have outstanding tax liabilities other than those reported pursuant to this initiative;
2. Not have been contacted by the Oklahoma Tax Commission, or third party acting on behalf of the Commission, with respect to the taxpayer's potential or actual obligation to file a return or make a payment to the state;
3. Not have collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes; and
4. Not have, within the preceding three (3) years, entered into a voluntary disclosure agreement for the type of tax owed.

E. If the Tax Commission agrees with the proposed terms for payment of the principal amount of tax due and owing, the penalties and interest otherwise imposed by law upon the principal amount shall be waived by operation of law and no further action by the Tax Commission or by the taxpayer shall be required for the waiver of such penalty and applicable interest.

F. The Tax Commission shall limit the period for which additional taxes may be assessed to three (3) taxable years for annually filed taxes or thirty-six (36) months for taxes that do not have an annual filing frequency.

G. Taxpayers who meet all of the qualifications specified in subsection D of this section, except those who have collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes, may enter into a modified voluntary disclosure agreement.

H. The provisions of a modified voluntary disclosure agreement shall be the same as a voluntary disclosure agreement as specified in subsection E of this section; provided, the waiver of interest shall not apply except as may be optionally granted at the discretion of the Tax Commission, and the period for which taxes must be reported and remitted or assessed is extended beyond the three-year or thirty-six-month period provided in subsection F of this section to include all periods in which tax has been collected but not remitted.

I. The waiver of penalty and interest provided herein is fully effective provided taxpayer continues payment or collection and remittance of applicable taxes, as required by law, for a period of one (1) year after the tax period(s) for which taxes were paid pursuant to this initiative.

J. The Tax Commission is authorized to expend necessary available funds, including contracting with third parties, to publicly advertise, assist in the collection of eligible taxes, and administer the Voluntary Disclosure Initiative and shall be exempt from the provisions of Section 85.7 of Title 74 of the Oklahoma Statutes for the purpose of implementing this section.

K. The Tax Commission is authorized to promulgate rules detailing the terms and other conditions of this program.

Historical Data

Laws 2017, HB 2380, c. 327, § 1, emerg. eff. July 1, 2017.

CHAPTER 1. ADMINISTRATIVE OPERATIONS

SUBCHAPTER 17. OKLAHOMA VOLUNTARY DISCLOSURE INITIATIVE

710:1-17-1. General provisions

In order to encourage the voluntary disclosure and payment of taxes owed to the State, the Legislature has authorized the Oklahoma Tax Commission to establish a three-month period during which a full waiver of penalty and interest due on eligible taxes shall be granted to any taxpayer who voluntarily files delinquent returns or reports and pays the taxes owed for any and all eligible periods.

710:1-17-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Voluntary Disclosure Initiative" means a program providing for the waiver of interest and penalty associated with an eligible Oklahoma tax liability.

"Voluntary disclosure initiative period" means the period commencing at the start of the posted business day on September 1, 2017 and ending on November 30, 2017.

"Commission" means the Oklahoma Tax Commission.

710:1-17-3. Voluntary Disclosure Initiative

(a) **Applicability.** Any taxpayer who voluntarily files delinquent returns or reports and pays in full the taxes associated with the filing periods for which waiver is sought, or enters into and timely complies with the terms of a payment plan pursuant to the provisions of 710:1-17-9, during the voluntary disclosure initiative period shall be entitled to a waiver pursuant to the Voluntary Disclosure Initiative.

(b) **Payments.** Payments made by taxpayers under the Voluntary Disclosure Initiative may be in the form of cash, check, money order, electronic funds transfer, or may be charged to an approved credit card. [See: www.tax.ok.gov]

(c) **Continued compliance.** The waiver of penalty and interest is fully effective provided taxpayer continues payment or collection and remittance of applicable taxes, as required by law, for a period of one (1) year after the tax period(s) for which taxes were paid pursuant to this initiative. If taxpayer does not continue payment or collection and remittance for a period of one (1) year after the periods for which tax was paid pursuant to this initiative, the interest and penalty will be reinstated.

(d) **Waiver of penalty and interest.** The penalties and interest otherwise imposed by law upon the principal amount shall be waived by operation of law and no further action by the

Commission or by the taxpayer shall be required for the waiver of such penalty and applicable interest.

(e) **Bankruptcy.** Generally, a taxpayer who is currently in bankruptcy is not eligible for participation in the Voluntary Disclosure Initiative.

710:1-17-4. Eligible tax liabilities to which Voluntary Disclosure Initiative may apply

All penalties and interest imposed upon the taxes set out in this subsection are eligible for waiver pursuant to the Voluntary Disclosure Initiative: [See: 68 O.S. § 216.4. generally]

- (1) Mixed beverage tax levied pursuant to Section 576 of Title 37 of the Oklahoma Statutes;
- (2) Gasoline and diesel tax levied pursuant to Section 500.4 of Title 68 of the Oklahoma Statutes;
- (3) Gross production and petroleum excise tax levied pursuant to Sections 1001, 1101 and 1102 of Title 68 of the Oklahoma Statutes;
- (4) Sales tax levied pursuant to Section 1354 of Title 68 of the Oklahoma Statutes;
- (5) Use tax levied pursuant to Section 1402 of Title 68 of the Oklahoma Statutes;
- (6) Income tax levied pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for tax periods ending prior to January 1, 2016; and
- (7) Withholding tax levied pursuant to Section 2385.2 of Title 68 of the Oklahoma Statutes.

710:1-17-5. Eligible taxpayers

To be eligible to participate in the Voluntary Disclosure Initiative taxpayers must:

- (1) Not have outstanding tax liabilities other than those reported pursuant to this initiative;
- (2) Not have been contacted by the Commission or third party acting on behalf of the Commission, with respect to the taxpayer's potential or actual obligation to file a return or make a payment to the state;
- (3) Not have collected taxes from others such as sales and use taxes or payroll taxes and not reported those taxes; and
- (4) Not have within the preceding three (3) years, entered into a voluntary disclosure agreement for the type of tax owed.

710:1-17-6. Modified Voluntary Disclosure Agreement

(a) Taxpayers who meet all of the qualifications specified in 710:1-17-5 except 710:1-17-5(3), may enter into a modified voluntary disclosure agreement.

(b) Taxpayers who comply with the terms of a modified voluntary disclosure agreement shall be granted a waiver of the penalty by operation of law and no further action by the Commission or by the taxpayer shall be required for the waiver of such penalty. A waiver of interest may be granted, at the discretion of the Commission.

(c) Additional taxes may be assessed for all periods in which tax has been collected but not remitted; the assessment period is not limited to the three-year or thirty-six-month period provided in 710:1-17-7.

710:1-17-7. Verification and review

Any tax return or report filed under the Voluntary Disclosure Initiative will remain subject to verification and review. The Commission shall limit the period for which additional taxes may be assessed to three (3) taxable years for annually filed taxes or thirty-six (36) months for taxes that do not have an annual filing frequency, except as provided in 710:1-17-6.

710:1-17-8. Disclosure

No return or document filed with the Commission pursuant to the Voluntary Disclosure Initiative will be subject to disclosure, except as provided by 68 O. S. § 205.

710:1-17-9. Payment plan guidelines

(a) The Commission shall waive the penalty and interest due on eligible taxes of any taxpayer who enters into a payment plan during the voluntary disclosure initiative period, complies timely with the terms of the payment plan, and pays in full the taxes associated with the filing periods for which waiver is sought.

(b) Individuals and businesses are eligible to enter into a payment plan if they are unable to pay the taxes in full during the voluntary disclosure initiative period and if the original base tax amount is at least \$75.00.

(c) The term of the payment plan will be for no more than six (6) payments. The first payment of ten percent (10%) will be required as the down payment and must be made with the request.

(d) Payments will be due on the 15th day of each subsequent month during the term of the payment plan.