



## **GUIDE TO THE TOWN OF AVON'S SALES TAX VOLUNTARY DISCLOSURE PROGRAM**

The Town of Avon (“the Town”) offers a voluntary sales tax disclosure program to encourage Taxpayers who have failed to collect or remit sales tax through inadvertence or mistaken belief to work with the Town in an effort to resolve their outstanding tax liability. To request consideration for a voluntary disclosure settlement agreement (“VDA”), the Town requires the following actions, information, representations, and warranties.

**Step 1** Read this entire information packet. Call or contact the Town at the number listed below with questions.

**Step 2** Submit a written request for an agreement. The request must include a complete Statement of Representations and Inducement (Exhibit A), and may be submitted anonymously and/or through a representative. Please be specific in your responses. Information required includes but is not limited to:

- A description of Taxpayer’s business activities and the date of commencement;
- An estimate of the Town’s sales-tax liability for no less than three years prior to the date of the VDA request (more time may be requested);
- Disclosure of whether the Taxpayer has collected but failed to remit Town taxes, or has failed to collect Town taxes for the period of time under consideration;
- Representation that the Taxpayer or related entities have not been contacted by the Town regarding a tax deficiency and are not currently under Town audit;
- Representation that the failure to file is not the result of fraud or gross negligence on the part of the Taxpayer, the presence of which is likely to affect the terms of any settlement reached.

Taxpayer will warrant the truthfulness of information provided and relied upon in a voluntary disclosure settlement agreement. If Taxpayer-provided information is later found to be incomplete or inaccurate, the agreement may become voidable. Accuracy is important when requesting a VDA with the Town.

**Step 3** If the Town chooses to proceed on your request, it will prepare a Settlement Agreement and Mutual Release for Taxpayer consideration (Exhibit B). The look-back period will depend on the nature of the Taxpayer’s activities and the magnitude of potential liabilities. For instance, if the Taxpayer has failed to collect sales taxes, the look-back period may be limited to three years. If, however, the Taxpayer has collected but failed to remit Town sales taxes, the look-back period will likely cover the entire period of collection. Taxpayer must return the accepted offer within 30 days of the date of

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transmission. The offer shall be void after 30 days but may be renegotiated as a fresh agreement.

The Town's standard interest rates will be charged on taxes paid. Penalties may be waived or reduced at the Town's sole discretion.

If you wish to pursue a VDA, please submit your request in writing, along with a Statement of Representations and Inducement (Exhibit A), and send it to the address at the bottom of this page. We will review the request and return to you with further questions or a proposed Settlement Agreement and Mutual Release at our earliest convenience.

Taxpayer generally will be expected to pay the overdue sales taxes, including penalty and interest, within 60 days of reaching agreement with the Town. Taxpayer also will be required to obtain all relevant business and tax licenses from the Town as part of the Settlement Agreement, and will be expected to remit sales taxes going forward.

If you have questions about the Town's program, please feel free to contact Joel McCracken at 970-748-4019. When submitting documents for this program, please mail them to Town of Avon, Attn: Joel McCracken, P O Box 975, Avon, CO 81620 or by email sent to [jmccracken@avon.org](mailto:jmccracken@avon.org).

*This is a general guide to the Town's willingness to receive requests for agreements. It creates no obligation on the Town to act. Each request is considered on a case-by-case basis.*

**Exhibit A**

**Guide to Statement of Representations and Inducement**

**1. Statement of nature of the Taxpayer's business**

Describe Taxpayer's business, including what the business sells, the services it provides, the date Taxpayer or its predecessor started conducting business within the Town of Avon, any change of ownership, including forms of ownership (i.e., incorporation), and any other business facts that might have a bearing on tax liability.

**2. Statement of Prior Sales Tax Liability**

Give annual estimate of the amount of sales tax Taxpayer should have remitted to the Town of Avon ("Town") for the past three years. State whether Taxpayer's sales tax liability for any single previous year is greater than the tax liability disclosed for any one of the past three years.

**3. Statement of sales tax collection/remittal**

State whether the Taxpayer has failed to collect sales taxes it was obligated to collect or whether the Taxpayer has collected the taxes but failed to remit them to the Town.

**4. Statement of facts giving rise to settlement request**

Describe the nature of Taxpayer's contact or relationship with the Town. Explain the reason for Taxpayer's earlier belief that sales tax returns and payment were not required or were somehow not provided. Explain the reason or change in circumstances that causes Taxpayer to seek this agreement.

State that the Taxpayer's past determination that taxes were not due to the Town was not a result of fraud or gross negligence, either by current or former management if applicable.

**5. Statement of Taxpayer's present tax contacts with the Town**

Describe any tax return filed or taxes paid by Taxpayer to the Town.

**6. Statement of past tax contacts with the Town**

Describe any contacts within the past three years between the Town and Taxpayer or Taxpayer subsidiary, parent company, affiliated entity, or trade name/DBA, which contacts may include, but are not limited to, the need to file a sales tax return, a possible tax deficiency, or a pending or possible audit.

**Exhibit B**

**Guide to Settlement Agreement and Mutual Release for Registration and Payment of Town  
of Avon Sales Tax**

*This document may be completed by the Town of Avon after receipt of Taxpayer's Statement of Representations and Inducement as set out in Exhibit A. Terms are subject to change based on the facts of each disclosure.*

**VOLUNTARY DISCLOSURE PROGRAM SETTLEMENT AGREEMENT AND MUTUAL  
RELEASE**

- A. **Parties**: This Settlement Agreement and Mutual Release (“Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”) between the Town of Avon, Colorado (“the Town”) and \_\_\_\_\_ (“Taxpayer”) (collectively, the “Parties”).
- B. **Recitals**: This Agreement provides relief from penalties for tax amounts voluntarily disclosed and remitted to the Town as stated below in Section C, paragraph 2(c). It also provides a waiver of additional taxes, interest, and penalty as stated in Section C, paragraph 2(d).
- C. **Agreement**: In recognition of the Taxpayer’s decision to address its sales tax liability with the Town, the Parties agree as follows:
1. **Facts, Taxpayer Representations, Material Inaccuracies or Omissions**.
    - a. Taxpayer has provided a statement of facts, set out in Exhibit A to this Agreement. Taxpayer warrants that the facts reflected in Exhibit A are true and complete in all material ways and are offered as inducement for the Town to enter into this Agreement. Taxpayer acknowledges that the Agreement is entered into by the Town in reliance on Taxpayer representations made in Exhibit A.
    - b. If any material fact set out in Exhibit A is incorrect or if any material fact is omitted from Exhibit A, then the Town may void this agreement at its sole discretion.
    - c. Taxpayer agrees to make its books and records available to the Town or its agent upon reasonable notice as provided in Avon Municipal Code Section 3.08.170.
    - d. Exhibit A is subject to the terms of this Agreement. If Exhibit A includes any proposed terms of agreement, they are not binding on the Town.

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### 2. Scope:

- a. Taxpayer believes that Taxpayer is or may be under an obligation either to collect and remit or to pay on its own account a four percent (4%) Town sales tax.
- b. This Agreement only covers tax periods identified in Exhibit A. Taxpayer agrees to pay the full amount of tax owed for those tax periods plus simple interest at the monthly rate of 1.5%.
- c. If Taxpayer is not in breach of this Agreement, the Town will assess penalty in the amount of \_\_\_% on amounts remitted and will waive criminal penalty for tax-related violations occurring within the time-period covered by this Agreement.
- d. If Taxpayer is not in breach of this Agreement, the Town will not assess sales tax, penalty, or interest for any tax period prior to the time-period covered by this Agreement, such prior periods being treated as closed and released by both Parties.
- e. Taxpayer waives all arguments based in nexus or jurisdiction for any tax paid hereunder.

3. Licensing and Returns: Within 30 days of the Effective Date, Taxpayer shall register online, including payment of all necessary licensing fees, and file online returns, or provide sales tax detail in lieu, for the lookback period set out in Exhibit A. The Town shall then calculate tax, interest, and penalty owing under this Agreement and notify Taxpayer of that amount due. Taxpayer shall have 30 days after notification to pay the full amount due in a single payment. Taxpayer shall make all payments to the Town of Avon, sent to the attention of Joel McCracken, P.O. Box 975, Avon, CO, 81620.

4. Review, Audit, and Further Assessment: Taxpayer acknowledges that the returns or sales tax detail filed pursuant to this Section C (3) of this Agreement shall be subject to the same review procedures as any other return of the same type. The Town reserves the right to audit the returns or sales tax detail at its sole discretion. The statute of limitations for Town review of such returns shall be three years from the date of filing of the returns or sales tax detail. Any additional amounts assessed pursuant to review or audit will not be eligible for the reduced penalty provided herein.

D. Consideration: The Parties enter into this Agreement based on the valuable consideration and mutual promises described herein, the receipt and adequacy of which is specifically acknowledged by each Party.

E. Mistake, Legal Developments: Taxpayer expressly recognizes that there may be facts about which Taxpayer is unaware or mistaken that could affect Taxpayer's evaluation of Taxpayer's liability. Taxpayer further recognizes that Taxpayer's understanding of legal issues

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may be incorrect or may be affected by future legal developments. Taxpayer expressly accepts these risks and freely enters into this Agreement as a means of avoiding further costs, inconvenience, and litigation risk with regard to the covered periods.

F. Agreement Freely Executed: Opportunity to Seek Advice: Each Party acknowledges and represents (1) that it has fully and carefully read and considered this Agreement prior to signing it; (2) that it has had the opportunity to make whatever investigation or inquiry it deems necessary or appropriate in connection with the subject matter and consequences of this Agreement; (3) that it has had the opportunity to seek legal, financial, and other types of advice that may bear on its decision to enter into this Agreement, as seems appropriate to it; and (4) that it is signing this Agreement voluntarily and free from any undue influence, coercion, duress, or fraud of any kind.

G. Interpretation and Construction: Nothing in this Agreement shall be construed as a generally applicable policy statement by the Town. No inferences may be drawn from this Agreement concerning other taxpayers, documents, audit periods, refund periods, or types of taxes. The Parties do not relinquish or release any claims or causes of actions against any person who is not a party to this Agreement.

H. Entire Agreement, Modification: This Agreement contains the entire understanding between the Parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect. No subsequent modification shall have any force or effect unless embodied in a written amendment or other agreement executed by all Parties.

I. Execution, Authority to Execute: This Agreement is effective upon execution by both Parties. Each signatory expressly represents and warrants that he or she has full authority to execute this Agreement on behalf of the Party designated.

J. Counterparts, Electronic Signature: This Agreement may be executed in one or more counterparts, each counterpart to be considered an original portion of this Agreement, and all of which together constitute a single instrument. An electronic signature shall be valid as if it were a physical signature.

K. Successors and Assigns: This Agreement and any amendments to it shall be binding on the Parties, their successors, and their assigns.

L. Severability: If any provision of this Agreement is determined to be invalid or unenforceable (in whole or in part) for any reason, the remaining provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

M. Choice of Law, Forum Selection: This Agreement and any claims arising under it shall be governed by, and construed and enforced in accordance with, the laws of the Town of Avon irrespective of any choice of law principles that may otherwise apply. The venue for any litigation arising out of this Agreement shall be in the Eagle County District Court.

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N. Costs: The Parties shall each bear their own costs, expenses, and attorney's fees incurred in connection in relation to the negotiation and drafting of this Agreement. In the event of subsequent litigation regarding this Agreement, costs, expenses, and attorney's fees shall be awarded as provided by Colorado law.

O. Confidentiality: The Parties acknowledge that returns filed and payments made pursuant to this Agreement are subject to the confidentiality requirements of Avon Municipal Code Section 3.08.200.

**Town of Avon**

By: \_\_\_\_\_  
Scott Wright  
Finance Director

Date: \_\_\_\_\_

**Taxpayer**

For: \_\_\_\_\_  
Taxpayer Name

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_