

THE GENETELLI CONSULTING GROUP  
*State and Local Tax Services*  
431 FIFTH AVENUE  
NEW YORK, NY 10016

(212) 684-4111  
FACSIMILE: (212) 213-1020  
EMAIL: [rgenetelli@genetelli.com](mailto:rgenetelli@genetelli.com)

**Subject: FIN 48 and Voluntary Disclosure**

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To Our Clients and Friends:

There has been a great deal of discussion about the implementation of FASB Statement No. 109 ("FAS 109"), Accounting for Income Taxes. FASB Interpretation No. 48 ("FIN 48") was issued to address uncertainty with respect to the accounting for income taxes (including state and local income taxes) required under FAS 109. The interpretation of FAS 109 is significant to taxpayers because of its impact on the financial statements.

Without getting into the mechanics of FIN 48, taxpayers must evaluate whether an uncertain tax position taken or expected to be taken on a tax return will more likely than not be sustained based on the technical merits. In assessing the more likely than not standard, taxpayers must assume that the tax position taken will be examined by the taxing jurisdiction having full knowledge of all the relevant information.

The term tax position includes a decision by a taxpayer not to file a tax return. Thus, if a taxpayer with questionable nexus contacts in a particular jurisdiction opts not to file there, the taxpayer must evaluate the merits of the position. If the more likely than not standard cannot be met, the entire tax benefit of the nonfiling position cannot be recognized on the financial statements. Moreover, even if the more likely than not standard can be met, the nonfiling position is then measured to determine the amount of benefit to recognize on the financial statements.

Consequently, a taxpayer may be required to accrue a FIN 48 reserve for the taxation of income in all nonfiling jurisdictions where potential nexus exists. Since the statute of limitations generally does not begin to run in a nonfiling situation, a FIN 48 nexus reserve, with interest and penalties, can result in a substantial liability. One solution to alleviate a significant FIN 48 nexus reserve is the implementation of voluntary disclosure.

Voluntary disclosure allows a taxpayer to approach a taxing jurisdiction anonymously through a representative. An agreement is negotiated with the taxing jurisdiction in which the taxpayer files returns (or provides return information) and pays back taxes for a limited number of years (typically the three or four most recent years), and timely pays taxes on a going forward basis.

In return, the taxing jurisdiction agrees to waive unpaid taxes for years prior to those covered by the agreement, as well as all penalties that could be imposed. Interest on the taxes paid pursuant to the agreement is generally required, although in certain instances, interest can be waived by the taxing jurisdiction. Confidentiality is preserved during the voluntary disclosure process by

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not revealing the name of the taxpayer or any information that could identify the taxpayer until the voluntary disclosure agreement is finalized. In certain instances, voluntary disclosure can be initiated on a multijurisdiction basis.

If you have any questions regarding the within, or would like to address the benefits of voluntary disclosure in light of a FIN 48 nexus reserve, please do not hesitate to contact me.

Richard W. Genetelli  
The Genetelli Consulting Group  
State and Local Tax Consultants  
431 Fifth Avenue, 3rd Floor  
New York, NY 10016  
Tel: (212) 684-4111  
Fax: (212) 213-1020  
<http://www.genetelli.com>