

New York State Tax Shelter

Voluntary Compliance Initiative

November 1, 2008, through January 31, 2009

Questions and Answers



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Introduction

The New York State Department of Taxation and Finance announces a Voluntary Compliance Initiative for taxpayers involved in tax shelters

New York State recently enacted legislation which establishes a Voluntary Compliance Initiative (VCI). The VCI allows eligible taxpayers to report and pay underreported tax liabilities, interest, and penalties attributable to tax avoidance transactions (tax shelters). This gives individual and corporate taxpayers who may have engaged in any tax shelters an opportunity to voluntarily resolve their tax liabilities associated with these transactions. These include, but are not limited to, transactions the Internal Revenue Service (IRS) has identified as *listed and/or reportable transactions*.

Under this legislation, the Tax Department may waive certain penalties attributable to the tax avoidance transaction and will not seek civil, administrative, or criminal action for those taxpayers who elect to participate in the VCI. The taxpayer can elect one of two options to participate either with, or without, appeal rights. For more information about these options, see Appendix A.

The New York State Tax Shelter VCI will be in effect from November 1, 2008, through January 31, 2009. January 31, 2009, falls on a Saturday. VCI applications postmarked by February 2, 2009, will be considered timely. Participation in the program requires completion of Form DTF-672, *Election to Participate in the Tax Shelter Voluntary Compliance Initiative*, filing **New York State original or amended tax returns** for each year for which the taxpayer used any tax avoidance transaction, and remittance of full payment of tax, interest, and applicable penalties for each tax year attributable to the tax avoidance transaction.

Under the original VCI legislation, an eligible taxpayer who was entitled to participate in the VCI but did not participate could be assessed a failure to participate penalty of 100% of the interest due on any deficiency attributable to a tax avoidance transaction. Accordingly, if an eligible taxpayer elects to participate in this VCI program and complies with the requirements for participation, 50% of this penalty will be waived in the case of disclosure of a listed or reportable transaction and 100% in the case of all other tax avoidance transactions.

For more information about participation and eligibility requirements, refer to the enclosed information, or visit our Web site (at www.nystax.gov).

About this publication

This publication contains answers to the most commonly asked questions regarding the Voluntary Compliance Initiative (VCI), including information on eligibility requirements and on how to apply for the VCI by mail.

Generally, the VCI applies to:

- personal income tax (Articles 22, 30, 30-A, and 30-B)
- corporation and franchise taxes (Articles 9, 9-A, 32, and 33)

There are two options available for the VCI:

- without appeal rights
- with appeal rights

For a complete description of the two options available for the VCI, see *Appendix A*.

See *Need help?* on page 19 of this publication for assistance.

The Tax Department's Web site, www.nystax.gov, is the best place to obtain more information and access to the VCI online information. Click on *Tax Shelter Legislation – Reporting Requirements and the Voluntary Compliance Initiative*. This Web site provides:

- Information about how to apply and pay under the VCI.
- Additional questions and answers related to the VCI.
- Tax returns for prior years (original and amended); most can be filled in (but not computed) using your personal computer and then printed for filing with the Tax Department.
- Disclosure requirements, forms, instructions, and frequently asked questions.
- Technical memos TSB-M-05(4)I and TSB-M-05(2)C, *Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*, and TSB-M-05(4.1)I and TSB-M-05(2.1)C, *Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*, and TSB-M-07(5)C and TSB-M-07(5)I, *Notification of New York Listed Transactions - Certain Charitable Contribution Deductions*.
- An online calculator which helps you estimate the amount of interest due.

For general information about our Tax Shelter VCI, call toll free 1 800 225-5829 for personal income tax, or 1 800 698-2908 for corporation tax.

You can download Form DTF-672 and many other forms from the *Forms and Instructions* page on the Tax Department's Web site (at www.nystax.gov). If you have access to a fax machine, you can also obtain Form DTF-672 and many other tax returns and forms by dialing toll free 1 800 748-3676. The fax transmission code for Form DTF-672 is 11136. Indexes of fax transmission codes for various forms can be found on the *Forms and Instructions* page on our Web site.

Frequently asked questions

1. *What is the voluntary compliance initiative?*

The voluntary compliance initiative (VCI) allows taxpayers to report and pay underreported tax liabilities, interest, and penalties attributable to the use of tax avoidance transactions (tax shelters). This voluntary compliance program applies to tax liabilities under Tax Law Articles 9, 9-A, 22, 30, 30-A, 30-B, 32, and 33 attributable to the use of tax avoidance transactions for tax years beginning before January 1, 2005.
2. *When does the VCI begin?*

The VCI begins **November 1, 2008**, and ends **January 31, 2009**. January 31, 2009, falls on a Saturday. VCI applications postmarked by February 2, 2009, will be considered timely.
3. *What is a tax avoidance transaction?*

A tax avoidance transaction (tax shelter) is any plan or arrangement devised for the principal purpose of avoiding tax, and includes, but is not limited to, *listed and/or reportable transactions* as designated by the Internal Revenue Service (IRS).

Generally, but not exclusively, a tax shelter:

 - is promoted with the promise of tax benefits,
 - has predictable tax losses or tax consequences,
 - has no true or correlating economic loss with respect to the taxpayer's income or assets; **or**
 - follows the literal reading of a tax statute in a manner inconsistent with the intent of the tax statute.

Characteristics may include, but are not limited to:

 - separation of income and expenses,
 - use of pass through entities,
 - use of third-party accommodators,
 - double benefit for the same tax loss; **or**
 - transactions conducted over a short period of time.
4. *What tax years and transactions can be settled under the VCI?*

Any tax year beginning before **January 1, 2005**, for which you participated in a tax shelter, or derived a tax benefit from a tax shelter can be settled under the VCI.
5. *How long do I have to file for the Tax Shelter VCI?*

Applications must be postmarked by February 2, 2009. You should consider filing and paying as soon as the VCI period begins on November 1, 2008, to stop the accrual of interest charges.
6. *How do I participate in the VCI?*

You may download forms and instructions needed to apply for the VCI from the Tax Department's Web site (at www.nystax.gov). Certain forms and returns are available as "fill-in" forms that may be filled in (but not computed) on a computer and printed. See *Need help?* on page 19.

To participate in the VCI, you must:

 - Complete a separate Form DTF-672 for each tax year for which you wish to participate.

- Complete an original or amended return for each tax year you wish to participate in the VCI. (If you did not file a return as a result of participation in a tax shelter, you must file an original return.)
- If this is the first return or report filed on or after June 13, 2005 (the date New York State tax shelter disclosure requirements went into effect), and you were required to disclose listed or reportable transactions to the IRS (typically federal Forms 8918, *Material Advisor Disclosure Statement*, or 8886, *Reportable Transaction Disclosure Statement*) for any tax year, you must attach copies of the IRS disclosure statements along with Form DTF-686, *Tax Shelter Reportable Transactions*, and, if applicable, Form DTF-686-ATT, *New York Reportable Transaction Disclosure Statement and Request for a Determination*, to your original or amended returns. For more information about the disclosure requirements, see the instructions for Form DTF-686 and the instructions for Form DTF-686-ATT.
- If you were under IRS audit for this same tax shelter transaction and the IRS audit is final, provide a copy of the final federal determination.
- Pay all tax, interest, and applicable penalty due.
- Attach a completed Form DTF-672 to the front of each original or amended return(s) being filed. Attach the payment and any other required information. Completed form(s), return(s), payments, and attachments must be filed by **February 2, 2009**.

Mail to: **NYS DEPARTMENT OF TAXATION & FINANCE
TAX SHELTER DISCLOSURE
PO BOX 22104
ALBANY NY 12201-2104**

Do not mail to the address on the original or amended return.

7. *Who is eligible to participate in the VCI?*

Generally, a taxpayer who used a tax avoidance transaction (tax shelter) is eligible to participate in the VCI if **all** of the following apply:

- a. The taxpayer filed a tax return using a tax shelter to underreport their tax liability or failed to file a tax return due to the use of a tax shelter.
- b. The taxpayer is **not** under criminal investigation with regard to the underreporting or underpayment of tax.
- c. The taxpayer has **not** been convicted of a crime relating to the tax that is the basis of the penalty for which relief is sought for any period or assessment for that tax.
- d. The taxpayer is **not** a party to any administrative proceeding or civil or criminal litigation relating to the tax that is the basis of the penalty for which relief is sought.
- e. The taxpayer was **not** eligible to participate in the 2003 New York Offshore Voluntary Compliance Initiative (OVCI).

8. *If I have a case that is in civil litigation or if I have a Notice of Deficiency protest case before the Bureau of Conciliation and Mediation Services (BCMS) or the Division of Tax Appeals, may I still apply for the VCI?*

You must withdraw from civil litigation for the disputed tax year to be eligible for the VCI. Protest cases before BCMS or the Division of Tax Appeals shall not be deemed pending on the date of the application if the taxpayer withdraws from such proceeding or litigation on or after the date of application, but prior to the waiver of the penalties. However, a taxpayer should not withdraw from a pending proceeding prior to submission of a VCI application.

9. *If I participated in the 2003 New York OVCI or the IRS OVCI, may I apply for the new VCI?*

If the tax avoidance transaction is different from the transactions covered by the 2003 New York OVCI or the IRS OVCI (Revenue Procedure 2003-11), you may participate in the new VCI.

If you were eligible to participate in the 2003 New York OVCI and failed to take part, you may not participate in the new VCI if the transactions are the same as those described in the 2003 New York OVCI.

10. *What are my filing options under the VCI?*

You must elect one of two filing options under the VCI. If you are participating in the VCI for more than one tax year, you may elect different options for each tax year. Once an election is made it is irrevocable.

- **Option 1 — Voluntary compliance WITHOUT appeal rights**
 - You file an original tax return or amend your tax return to eliminate the tax avoidance transaction (tax shelter).
 - You pay the tax, interest, and applicable penalties due.
 - The Commissioner of Taxation and Finance will not bring or seek criminal, civil, or administrative action against you for that tax year with respect to the tax shelter.
 - You cannot file a claim for credit or refund for amounts paid under the VCI.
 - All applicable penalties are waived, except that only 50% of the penalty for failure to participate in the first VCI program will be waived if you participated in a listed or reportable transaction.

See Chapter 61 of the Laws of 2005, Part N, section 11(1).
- **Option 2 — Voluntary compliance WITH appeal rights**
 - You file an original tax return or amend your original tax return to eliminate the tax avoidance transaction.
 - You pay the tax, interest, and applicable penalties due.
 - Penalties that apply to your participation in the tax avoidance transaction are waived or abated, **except** the penalties imposed under Tax Law sections 685(b), 1085(b) (deficiency due to negligence), 685(p), and 1085(k) (substantial underpayment of tax liability). In addition, only 50% of the penalty for failure to participate in the first VCI will be waived if you participated in a listed or reportable transaction.
 - The Commissioner of Taxation and Finance will not bring or seek criminal, civil, or administrative action against you for that tax year with respect to the tax shelter.
 - You reserve the right to file a claim for credit or refund for the amounts paid under the VCI, including certain penalties.

11. *Do I have to be a New York State resident to be eligible to participate in the VCI?*

No, you do not have to be a New York State resident to be able to participate in the VCI. Generally, any taxpayer that had a filing requirement with New York State for any tax year that involved a tax avoidance transaction (tax shelter) may participate in the VCI.

12. *May I file for an extension of time to participate in the VCI if I need more time?*

No, there is no extension of time to participate in the VCI. To participate in the VCI, you must file Form DTF-672 between November 1, 2008, and January 31, 2009, with your original or amended tax return and payment. January 31, 2009, falls on a Saturday. VCI applications postmarked by February 2, 2009, will be considered timely.

13. *If I am a tax shelter promoter or material advisor and I participated in a tax avoidance transaction, am I eligible to participate in the VCI?*

Yes, if you are a tax shelter promoter or material advisor you may participate in the VCI. The same procedures that apply to any taxpayer participating in the VCI apply to you.

14. How will I know if I have been accepted in the VCI?

You will only be contacted if your VCI election Form DTF-672 and attached return cannot be processed, you are ineligible, or if more information is required. Otherwise, your VCI election Form DTF-672 and attached return is accepted as filed.

15. May I participate in the VCI if I am currently under examination by the Tax Department?

Yes. If you or one of your related entities is currently under examination by the Tax Department, you can still participate in the VCI if you meet the requirements. Immediately notify the auditor conducting the examination that you choose to participate in the VCI.

16. May I participate if I am currently under IRS audit, or recently completed an IRS audit for a tax avoidance transaction (tax shelter)?

Yes. See below for guidance on how to file an original or amended tax return depending on whether your IRS determination is final (amounts not in dispute) or pending (audit still open or determination in dispute). Under either option, the full amount of tax, interest, and applicable penalties is due by January 31, 2009. January 31, 2009, falls on a Saturday. VCI applications postmarked by February 2, 2009, will be considered timely.

- **Under Option 1 — WITHOUT appeal rights**

- IRS results are final: file an original or amended tax return applying the results of the IRS audit.

- All applicable penalties are waived, except that only 50% of the penalty for failure to participate in the first VCI program will be waived if you participated in a listed or reportable transaction.

See Chapter 61 of the Laws of 2005, Part N, section 11(l).

- IRS results are pending: file an original or amended tax return to eliminate the tax shelter and indicate that the issue is pending a final IRS determination with respect to a tax avoidance transaction.

- **Under Option 2 — WITH appeal rights**

- IRS results are final: file an original or amended tax return applying the results of the IRS audit and maintain your appeal rights with the New York State Department of Taxation and Finance. You remain subject to penalties imposed under Tax Law sections 685(b), 1085(b) (deficiency due to negligence), 685(p), and 1085(k) (substantial underpayment of tax liability). In addition, only 50% of the penalty for failure to participate in the first VCI will be waived if you participated in a listed or reportable transaction.

- IRS results are pending: file an original or amended tax return to eliminate the tax avoidance transaction and indicate the issue is pending a final IRS determination with regard to the tax avoidance transaction. You remain subject to penalties imposed under Tax Law sections 685(b), 1085(b) (deficiency due to negligence), 685(p), and 1085(k) (substantial underpayment of tax liability). In addition, only 50% of the penalty for failure to participate in the first VCI will be waived if you participated in a listed or reportable transaction. You may file a claim for refund with a copy of the federal determination after the final federal determination is made.

17. *May I file a tax return under the VCI reversing less than 100% of the tax avoidance transaction (tax shelter)?*
- If you reverse only a portion of the tax avoidance transaction under the VCI and the reversal is not based on a final determination issued by the IRS, the portion not reversed may be subject to the negligence, fraud, and substantial understatement penalties, as well as the penalty equal to 100% of the interest payable.
18. *May my representative, who has my power of attorney, sign Form DTF-672, or the tax returns attached to Form DTF-672, on my behalf?*
- Yes. Attach the signed power of attorney (Form POA-1), showing the representative's designated authority to sign agreements and tax returns on your behalf, to Form DTF-672.
19. *May I still participate in the VCI if I am involved in litigation against the law firm, accounting firm, and/or promoter that sold, designed, and/or recommended the tax shelter to me?*
- Yes, you may participate in the VCI if you are involved in litigation against the law firm, accounting firm, and/or promoter that sold, designed, and/or recommended the tax shelter to you.
20. *May I still participate in the VCI if I don't have the ability to pay the full amount of tax, interest, and applicable penalties by February 2, 2009?*
- Yes. Although the VCI requires you to pay the full amount of tax, interest, and applicable penalty for all tax years you participate in the VCI by February 2, 2009, if you do not have the ability to fully pay, you may request an installment payment.
- 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 Tax Department determines your inability to fully pay is genuine, you may enter into an installment payment agreement with the consent of the Commissioner of Taxation and Finance. For more information about installment payment agreements, call 1 800 835-3554.
- If you fail to fully comply with the terms of the installment payment agreement, the waiver of penalties becomes null and void, and the total amount of tax, interest, and all penalties will be due immediately.
21. *What happens if I don't compute the tax, interest, and penalties correctly?*
- When you file Form DTF-672 and elect to participate in the VCI, you must pay a best estimate of the tax, interest, and penalty due. You can visit the Tax Department's Web site at www.nystax.gov, click on *Tax Shelter Legislation – Reporting Requirements and the Voluntary Compliance Initiative*, and go to the *Interest calculator* which will help you estimate the amount of interest due. If you compute the tax and/or interest incorrectly, the Tax Department will calculate the correct tax and interest due, and, if required, will send you a bill for the balance due. The billing document will specify the payment due date. You must pay the total amount due by the due date. Failure to do so will prevent the waiver of penalties.
22. *May I pay by wire transfer?*
- You may pay by wire transfer for personal income tax only.
23. *Will a refund be granted if I pay too much tax or interest under the VCI?*
- A refund will be granted if the Tax Department determines an overpayment was made on a return that was filed with Form DTF-672. However, the overpayment will first be applied to any other outstanding tax liabilities or other debts you may have that are collected by the Tax Department.
24. *Does participating in the VCI fulfill my tax shelter disclosure requirements?*
- No. Participation in the VCI does not fulfill the reporting requirements provided for in Tax Law section 25(a). If the tax return filed with Form DTF-672 is the first return or report filed on or after June 13, 2005, attach Form DTF-686 and, if applicable, Form DTF-686-ATT to your return.

25. What happens if I don't participate in the VCI?

For more information about the disclosure requirements, see the instructions for Form DTF-686 and the instructions for Form DTF-686-ATT, as well as TSB-M-05(4)I, TSB-M-05(2)C, TSB-M-05(4.1)I, and TSB-M-05(2.1)C. These forms and TSB-Ms are available on our Web site (at www.nystax.gov). Click on *Tax Shelter Legislation – Reporting Requirements and the Voluntary Compliance Initiative*.

After the VCI ends, the Tax Department will vigorously pursue taxpayers who have engaged in tax avoidance transactions (tax shelters). For those found to be involved in these transactions, civil penalties can be substantial.

If you are an eligible taxpayer and do not participate in the VCI, you will be subject to additional penalties, including a penalty equal to 100% of the interest payable on any deficiency assessment.

The statute of limitations has been extended for tax shelter transactions. Tax may be assessed within six (6) years of filing your tax return if there is a tax avoidance transaction. See Tax Law sections 683(c) and 1083(c).

26. What penalties may be avoided by participating in the VCI?

The following is a summary of penalties that may be avoided by participating in the VCI:

- Deficiency due to negligence penalty (see Tax Law sections 685(b) and 1085(b)):
 - an amount equal to 5% of the deficiency; **plus**
 - an amount equal to 50% of the interest payable.

Note: Taxpayers participating in the VCI who choose to maintain their appeal rights **remain subject to the negligence penalty**.

- Deficiency due to fraud penalty (see Tax Law sections 685(e) and 1085(f)):
 - an amount equal to 50% of the deficiency; **plus**
 - an amount equal to 50% of the interest payable.
- Substantial understatement of liability penalty (see Tax Law sections 685(p) and 1085(k)):
 - an amount equal to 10% of the amount of any underpayment attributable to such understatement.

Note: Taxpayers participating in the VCI who choose to maintain their appeal rights **remain subject to the substantial understatement penalty**.

- Listed or reportable transaction understatement penalty (see Tax Law sections 685(p-1) and 1085(k-1)):
 - an amount equal to 20% of the understatement due to a listed, or reportable transaction with significant tax avoidance or evasion purposes;
 - the penalty is increased to 30% if the transaction is not adequately disclosed.
- Penalty in the amount of 100% of the interest payable is added to the tax. See Chapter 61 of the Laws of 2005, Part N, section 11(l).

Note: Taxpayers who have participated in a listed or reportable transaction remain subject to 50% of this penalty regardless of their choice of with or without appeal rights.

27. If I already paid penalties prior to the VCI, may I apply for VCI and request a refund of the applicable penalties paid?

Yes, in addition to filing a completed Form DTF-672, corporations **must** file Form CT-8, *Claim for Credit or Refund of Corporation Tax Paid*, and individuals **must** file Form IT-113-X, *Claim for Credit or Refund of Income Tax*.

28. *Am I eligible to receive interest on the overpayment of tax if I participate in the VCI with right of appeal, and successfully appeal?* Yes. If you prevail on the merits of the transaction and a refund is ultimately due, normal rules apply regarding accrued interest on overpayments and offsetting refunds against other unpaid tax liabilities.
29. *If I have questions regarding my specific situation or need additional information about the VCI, whom can I contact?* If you have questions, call 1 800 225-5829 or visit our Web site (at www.nystax.gov). Information given will only be an overall explanation of the VCI program and its requirements. We will not be able to address hypothetical situations, because of the potential for misunderstanding that exists when there is no assurance that the hypothetical situation presented contains all relevant facts.
30. *Will the New York State Department of Taxation and Finance share information with the IRS or other states regarding taxpayer participation in the VCI?* Yes. We have a long-standing sharing agreement with the IRS, other states, and other taxing authorities. Accordingly, the Tax Department shares any information the IRS, other states, or other taxing authorities are authorized to receive.
31. *Does participation in the VCI exempt me from criminal prosecution?* The Tax Department will not initiate criminal action for amounts reported during the VCI if you are eligible to participate in the VCI and comply with all requirements.
32. *Can I enter into an offer in compromise for amounts owed under the VCI?* No. You cannot enter into an offer in compromise for amounts owed under the VCI.
33. *If I filed a return or report after June 13, 2005, to fulfill the disclosure requirements under Tax Law section 25(a), may I still participate in the VCI for that tax period?* Yes. The VCI is a compliance initiative and you may participate even though you have disclosed the listed or reportable transaction with your return or report prior to your election to participate in the VCI regarding that listed or reportable transaction.
34. *If I participate in the VCI, is this considered an admission that I am involved in a tax shelter?* No. A taxpayer's participation in the VCI shall not be considered evidence that the taxpayer engaged in a tax avoidance transaction.
35. *If the transaction in which I am involved is not a listed or reportable transaction and I cannot explain the transaction as required in Section 3 of Form DTF-672, will I be allowed to participate?* Yes. The Tax Department will work with you to gather information on your transaction so that you may participate in this program.
36. *If I participated in the prior VCI in 2005/2006, am I eligible to participate in the current VCI?* Yes. If you have engaged in additional tax avoidance transactions that were not disclosed during the original VCI, you may disclose them now and pay the applicable tax, interest, and penalty.
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DTF-672
(7/08)

New York State Department of Taxation and Finance

Election to Participate in the Tax Shelter Voluntary Compliance Initiative

Tax Law — Articles 9, 9-A, 22, 30, 30-A, 30-B, 32, and 33

All filers must enter tax period:

Beginning Ending

Section 1 — Taxpayer information *(see instructions, Form DTF-672-1)*

Name(s) as shown on your return		Taxpayer identification number as shown on page 1 of your return	
Spouse's name <i>(for individuals, if applicable)</i> or contact name <i>(for businesses)</i>		Spouse's identification number <i>(if applicable)</i>	
Mailing address <i>(number and street or PO Box)</i>		Form number of return attached	
City, village, town, or post office		Type of entity if other than an individual	
State	ZIP code	Country	If currently under NYS audit, enter audit case ID # and auditor name
Daytime telephone number with area code ()	Combined and consolidated group information		E-mail address

Section 2 — Voluntary Compliance Initiative (VCI) options *(see instructions)*

You must complete a Form DTF-672 for each tax year and for each tax return you are filing. You must elect one option for each tax year for which you are filing a tax return. You do not have to elect the same option for all tax years. However, once made, the election is irrevocable.

Option 1 - Without appeal rights <input type="checkbox"/> I elect to participate in the VCI under Option 1 for the tax period indicated above. I understand this option is irrevocable, and waive the right to file a claim for credit or refund for any amounts paid under this option.	Option 2 - With appeal rights <input type="checkbox"/> I elect to participate in the VCI under Option 2 for the tax period indicated above. I understand this option is irrevocable, and retain the right to file a claim for credit or refund for any amounts paid under this option.
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Section 3 — Tax shelter information *(see instructions; attach a separate schedule if necessary)*

Promoter's name and address		Internal Revenue Service (IRS) Notice number <i>(if other than an IRS Notice number, explain)</i>		
Partnership's or other entity's name		Partnership's or other entity's employer identification number (EIN)		
Entity involved in transaction	Total loss, expense, or deduction amount	Ordinary loss amount	Capital loss amount	Tax return <i>(form, schedule, line item)</i>
Are you under audit, or have you been audited or participated in a settlement for this tax shelter by the IRS or another tax jurisdiction? <i>(Mark an X in one box.)</i>		If Yes, enter the name of the tax jurisdiction and the tax years.		
Yes <input type="checkbox"/> No <input type="checkbox"/>				

Section 4 — Perjury statement *(see instructions)*

Under penalties of perjury, I declare that I have examined this form, including any accompanying statements, and to the best of my knowledge it is true, correct, and complete. Taxpayer participation in the voluntary compliance initiative will not be considered evidence that the taxpayer engaged in a tax avoidance transaction.

Signature	Official title	Date
Signature	Official title	Date

Mail Form DTF-672, your tax return, and payment to:

NYS DEPARTMENT OF TAXATION AND FINANCE, TAX SHELTER DISCLOSURE, PO BOX 22104, ALBANY NY 12201-2104

If you are using a private delivery service, see the instructions for the address to use.

67201080099





Instructions for Form DTF-672

Election to Participate in the Tax Shelter Voluntary Compliance Initiative

General information

New York State is offering a Voluntary Compliance Initiative (VCI) for eligible taxpayers who participated in tax avoidance transactions (tax shelters). The VCI allows taxpayers to report and pay underreported tax liabilities, interest, and penalties attributable to tax shelters. The VCI applies to tax liabilities under Tax Law Articles 9, 9-A, 22, 30, 30-A, 30-B, 32, or 33 attributable to the use of tax shelters for tax years beginning before January 1, 2005. The VCI begins November 1, 2008, and ends January 31, 2009. January 31, 2009 falls on a Saturday. VCI applications postmarked by February 2, 2009 will be considered timely. For more information, see Publication 672, *New York State Tax Shelter Voluntary Compliance Initiative*.

Purpose of Form DTF-672, Election to Participate in the Tax Shelter Voluntary Compliance Initiative

Form DTF-672 allows eligible taxpayers who underreported their tax liabilities by participating in tax shelters to participate in the VCI and pay the associated liabilities without incurring all of the penalties for participating in tax shelters. An eligible taxpayer may elect one of two options to participate in the VCI, either with or without appeal rights (see *Section 2* on the back of these instructions).

How to participate

Complete an original or amended tax return for each tax year for which you wish to participate in the VCI. If you did not file a return because of participation in a tax shelter, you must file an original return. A separate Form DTF-672 must be completed for each tax year and for each tax return. Form DTF-672 must be completed and attached to the front of the original or amended return that is being filed as part of the VCI. If you were under Internal Revenue Service (IRS) audit for this same tax shelter transaction and the IRS audit is final, attach a copy of the final federal determination.

Note: Every taxpayer or person required to file a return or report under Tax Law Articles 9, 9-A, 22, 30, 30-A, 30-B, 32, or 33 on or after June 13, 2005, who is or was also required to file a disclosure statement related to a listed or reportable transaction with the IRS (pursuant to section 6011 of the Internal Revenue Code (IRC)), must disclose that information with the New York State return or report. For more information, see the instructions for Forms DTF-686, *Tax Shelter Reportable Transactions*, and DTF-686-ATT, *New York Reportable Transaction Disclosure Statement and Request for a Determination*.

Definitions

A *tax avoidance transaction* (a tax shelter) is a plan or arrangement devised for the principal purpose of avoiding tax. These transactions include, but are not limited to listed transactions. A *listed transaction* is a transaction that is the same as or substantially similar to one that the IRS has determined to be a tax avoidance transaction and is identified by an IRS notice or other form of published guidance.

Eligibility

An *eligible taxpayer* is an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other entity or person, who or which has a tax liability under New York State Tax Law Articles 9, 9-A, 22, 30, 30-A, 30-B, 32, or 33 with regard to a tax avoidance transaction for tax years beginning before January 1, 2005. A taxpayer who participated

in the original VCI may still participate in the current VCI.

An otherwise eligible taxpayer is **not** entitled to participate in the VCI if any of the following apply:

- The taxpayer is a party to any criminal investigation by any federal agency or New York State or any political subdivision thereof, with regard to underreporting or underpayment of tax; **or**
- The taxpayer is a party to any litigation pending at the date of the taxpayer's application in the Bureau of Conciliation and Mediation Services (BCMS) or Tax Appeals or any court of this state or the United States relating to any action or failure to act which is the basis for the penalty with respect to which relief is sought; **or**
- The taxpayer has been convicted of a crime relating to the tax that is the basis for the penalty with respect to which relief is sought for any period or assessment for that tax; **or**
- The taxpayer was eligible to participate in the 2003 New York Offshore Voluntary Compliance Initiative (OVCI), and the transactions are the same as those described in the 2003 OVCI program. (The taxpayer may still participate in the VCI if the transactions were not the same as those that were the basis for participation in the OVCI.)

Specific instructions

Section 1 — Taxpayer information

Individuals

Complete the appropriate lines, including the name and social security number (SSN), spouse's name and SSN (if applicable), mailing address and daytime telephone number. Also enter the form number of the tax return attached to Form DTF-672 (Form IT-200, IT-201, IT-201-X, IT-203, IT-203-X, or IT-113-X). If you are currently under NYS audit, enter the audit case ID number and auditor's name.

Businesses

For purposes of Form DTF-672, a *business* means a corporation, S corporation, partnership, trust, estate, limited liability company, joint stock company, or any other entity other than an individual. Complete the appropriate lines, including the name and federal employer identification number (EIN), contact name, mailing address and daytime telephone number. Enter the form number of the tax return attached to Form DTF-672 (Form CT-3, CT-3-A, CT-3M/4M, CT-3-S, CT-3-S-A, CT-4, CT-4-S, CT-32, CT-32-A, CT-32-M, CT-32-S, CT-33, CT-33-A, CT-33-C, CT-33-M, CT-33-NL, CT-183, CT-183-M, CT-184, CT-184-M, CT-185, CT-186, CT-186-A, CT-186-A/M, CT-186-E, CT-186-EZ, CT-186-M, CT-186-P, CT-186-P/M, CT-8, CT-9, CT-3360, IT-204, IT-205, or IT-113-X). Also enter the type of entity (corporation, S corporation, partnership, trust, estate, limited liability company, joint stock company, etc.). If you are currently under NYS audit, enter the audit case ID number and auditor's name.

Combined and consolidated group information

If the taxpayer is a member of a New York State combined group, Form DTF-672 must be completed and filed by the designated parent or payer corporation on behalf of the group. If a tax shelter reported on this form was reported on a federal return filed by some other entity, enter the name and EIN of that other entity. For example, if the taxpayer is included in a federal consolidated return, but files a separate New York State return,

enter the name and EIN of the parent who filed the federal consolidated return. If the taxpayer is the designated parent or payer corporation of a New York State combined group, and if one of the group's members participated in a tax shelter reported on Form DTF-672, enter that member's name and EIN. Attach a separate schedule if more space is needed.

Section 2 — Voluntary Compliance Initiative (VCI) options

You must elect either Option 1 (without appeal rights) or Option 2 (with appeal rights). Read the descriptions below to determine the benefits and agreements for each option. Under either option, the full amount of tax and interest is due by January 31, 2009. A separate election must be made for each tax year for which you elect to participate in the VCI. The election of either option is irrevocable.

Option 1 – Without appeal rights

If you elect to participate under this option, you may not file a claim for credit or refund with respect to the use of a tax shelter for that tax year. All applicable penalties are waived, except that only 50% of the penalty for failure to participate in the first VCI program will be waived if you participated in a listed or reportable transaction.

See Chapter 61 of the Laws of 2005, Part N, section 11(l).

Additionally, the Commissioner of Taxation and Finance will not bring or seek civil, administrative, or criminal action against the taxpayer for that tax year with respect to the tax shelter.

Option 2 – With appeal rights

If you elect to participate under this option, you retain your right to file a claim for credit or refund with respect to the use of a tax shelter for that tax year. Under this option, all applicable penalties are waived except the negligence and substantial understatement penalties, imposed under Tax Law sections 685(b) and (p), and 1085(b) and (k), may apply. In addition, only 50% of the penalty for failure to participate in the first VCI will be waived if you participated in a listed or reportable transaction. Additionally, the Commissioner of Taxation and Finance will not bring or seek civil, administrative, or criminal action against the taxpayer for that tax year with respect to the tax shelter.

Section 3 — Tax shelter information

Enter the promoter names and addresses. *Promoters* are persons and organizations you paid a fee for promoting, soliciting, or recommending the tax shelter to you. If the tax shelter being reported is a listed or reportable transaction (or substantially similar), enter the IRS notice number. If the tax shelter is not a listed or reportable transaction, explain the transaction. List the names, addresses, and EIN of all entities involved in the tax shelter being reported. If you are filing an amended return, enter the loss, expense or deduction amounts, the ordinary loss amount, the capital loss amount, and the form, schedule, and line item number of the item on your original return. If you are currently under audit, or have been audited or have participated in a settlement for this same transaction with the IRS or another taxing jurisdiction, mark an **X** in the Yes box and enter the name of the jurisdiction and the tax years involved. If you need more space for any of the above items, attach a separate schedule.

Section 4 — Perjury statement

Individuals

Sign and date Form DTF-672 in the spaces provided. If you are filing a joint return, both spouses must sign and date Form DTF-672. You do not need to enter a title. If one spouse

is unable or refuses to sign Form DTF-672, you must provide a statement explaining why that spouse is unable or refuses to sign.

Businesses

Form DTF-672 must be signed and dated by an appropriate owner, officer, or fiduciary for the business. Include the title of the person signing. If more than one signature is needed, use the second line provided. For more information on signature requirements, see the instructions for the tax return you are filing with Form DTF-672.

Mailing instructions

Attach a completed Form DTF-672 to the front of each original or amended return being filed. Completed form(s), tax return(s), and payment(s) must be filed by **January 31, 2009** to:




**NYS DEPARTMENT OF TAXATION AND FINANCE
TAX SHELTER DISCLOSURE
PO BOX 22104
ALBANY NY 12201-2104**

Do not mail to the address shown on the original or amended return.

Private delivery services — If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your return and tax payment. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services*. See *Need help?* below for information on obtaining forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery.

If you use any private delivery service, whether it is a designated service or not, send the forms covered by these instructions to: NYS Tax Department, Tax Shelter Disclosure, W A Harriman Campus, Albany NY 12227.

Need help?

	Internet access: www.nystax.gov (for information, forms, and publications)	
	Fax-on-demand forms:	1 800 748-3676
	Corporation Tax Information Center:	1 888 698-2908
	Personal Income Tax Information Center:	1 800 225-5829
	From areas outside the U.S. and outside Canada: (518) 485-6800	

Privacy notification — The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

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Appendix A: Options for the tax shelter voluntary compliance initiative

You must elect either Option 1 or Option 2 for each tax year and article of the Tax Law. You do **not** need to elect the same option for all tax years. However, once made, the election is irrevocable.

Option 1 — Without appeal rights

If you elect this option, you may not file a claim for credit or refund with respect to the use of a tax shelter for that tax year. All applicable penalties are waived, except that only 50% of the penalty for failure to participate in the first VCI program will be waived if you participated in a listed or reportable transaction.

See Chapter 61 of the Laws of 2005, Part N, section 11(l).

Additionally, the Commissioner of Taxation and Finance will not bring or seek civil, administrative, or criminal action against the taxpayer for that tax year with respect to the tax shelter.

Option 2 — With appeal rights

If you elect this option, you retain your right to file a claim for credit or refund with respect to the use of a tax shelter for that tax year. Under this option, however, negligence and substantial understatement penalties, imposed under Tax Law sections 685(b) and (p), and 1085(b) and (k), may apply. In addition, only 50% of the penalty for failure to participate in the first VCI will be waived if you participated in a listed or reportable transaction. All other penalties applicable to the underreporting or underpayment of tax liabilities attributable to the use of the tax shelter for that year will be waived. Additionally, the Commissioner of Taxation and Finance will not bring or seek civil, administrative, or criminal action against the taxpayer for that tax year with respect to the tax shelter.



Internet access

Access the Tax Department’s Web site for information about the Voluntary Compliance Initiative (VCI), including applications and tax returns, frequently asked questions, and more detailed information.

www.nystax.gov



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

Personal income tax 1 800 225-5829
Corporation tax 1 800 698-2908
From outside the U.S. and outside Canada (518) 485-6800



Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week.

1 800 748-3676
 1 800 748-FORM
 The fax-on-demand code for Form DTF-672 is 11136



For general inquiries about the Voluntary Compliance Initiative, address your letter to:

NYS TAX DEPARTMENT
 TAXPAYER CONTACT CENTER — VCI
 W A HARRIMAN CAMPUS
 ALBANY NY 12227

To obtain a withdrawal of your protest for a proceeding before the Bureau of Conciliation and Mediation Services (BCMS), address your letter to:

NYS TAX DEPARTMENT — BCMS
 W A HARRIMAN CAMPUS
 ALBANY NY 12227

To obtain a withdrawal of your protest for a proceeding in the Division of Tax Appeals (either an Administrative Law Judge hearing or a review before the Tax Appeals Tribunal), address your letter to:

NYS TAX DEPARTMENT
 OFFICE OF COUNSEL — LITIGATION SECTION
 W A HARRIMAN CAMPUS
 ALBANY NY 12227

To obtain a withdrawal of your protest for civil or surrogate court litigation:

Contact the court with jurisdiction over the case (for example, Appellate Division of the Supreme Court, Third Department)



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities): If you have access to a TTY, contact us at 1 800 634-2110.

If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

NYS TAX DEPARTMENT
W A HARRIMAN CAMPUS
ALBANY NY 12227

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