

By-Lined Article

STATE TAX AMNESTY AND VOLUNTARY DISCLOSURE PROGRAMS

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Our tax system is based on voluntary compliance. That is, the principle that taxpayers voluntarily comply with the tax laws and report their income and other tax items honestly. Some taxpayers, including individuals and businesses, neglect to file their tax returns and pay taxes due, at times because of unawareness, complexity in the tax law or inability to pay. Additionally, some returns are filed in error, resulting in the imposition of additional tax, interest and penalties. Tax amnesty and voluntary disclosure programs are designed with these taxpayers in mind.

Both tax amnesty and voluntary disclosure programs encourage taxpayers to voluntarily file and pay back-taxes. In return, the taxing authority will not criminally prosecute and will reduce, or perhaps entirely waive, associated penalties, which often are steep. In order to qualify for the waiver of penalties under the typical amnesty program, the taxpayer must pay the entire amount of taxes, plus some or all of the interest that may be due by the program's deadline or expiration date. Additionally, taxpayers may be required to sign a settlement agreement in which the taxpayer agrees to file all future tax returns and pay all future tax liabilities timely.

While a tax amnesty program typically provides comprehensive relief, albeit within a very short window of opportunity, and a fresh start, taxpayers considering an amnesty or voluntary disclosure program should consult with a qualified tax professional prior to participation, as the risks or occurrences of disqualification from amnesty programs are great for even the slightest omission of fact or procedure. If disqualification occurs, rest assured enforcement is not too far behind.

The goal of the taxing authority is to collect as much outstanding tax liability as possible within a very short time frame, often within two or three months subsequent to the announcement of the program. In most cases, taxing authorities will waive penalties, in full, if outstanding tax returns and related liabilities are paid during the amnesty period. If no action is taken during the amnesty period, the taxing authority will often impose larger than normal penalties. Tax amnesty programs differ from voluntary disclosure programs in that amnesty programs are typically of short duration while voluntary disclosure programs often provide a greater window of opportunity for entrance. The basis for waiver of interest and penalty also may

differ between the two programs. California, for example, has no current tax amnesty program in place, but maintains both an ongoing voluntary disclosure program as well as a filing compliance agreement program for non-residents.

Pennsylvania offers a voluntary disclosure program for tax years 2005 through 2008. Taxpayers must make formal request to enter the program and cannot be under current investigation by the Pennsylvania Department of Revenue. Pennsylvania will waive all penalties but will require payment of interest. Taxpayers registered with the Pennsylvania Department of Revenue are not eligible for the program. Eligible taxpayers include unregistered taxpayers who:

- Recently became aware of outstanding non-corporate tax liabilities.
- Collected, but failed to remit, business trust fund taxes.
- Recently became aware of outstanding corporate tax liabilities.

Qualifying taxpayers owing non-corporate tax liabilities will be responsible for satisfying outstanding tax liabilities for up to three years, while those taxpayers owing corporate tax liabilities will be responsible for satisfying outstanding tax liabilities for up to five years.

In addition to the Pennsylvania voluntary disclosure program, the proposed Pennsylvania budget, as of this writing currently being debated and as yet unapproved, contains provisions that would establish a Pennsylvania tax amnesty program proposed to be in effect until May 15, 2010. The program will apply to eligible taxpayers delinquent on payment of a liability for eligible taxes or unfiled returns as of June 30, 2008. This proposed program may provide even more advantages than the current Pennsylvania voluntary disclosure program as it will eliminate penalties and 50 percent of the interest otherwise owed. Watch for ongoing developments in the contentious Pennsylvania budget process.

New Jersey also offers a voluntary disclosure program for taxpayers meeting the following qualifications:

- Taxpayers must not have had previous contact with the New Jersey Division of Taxation or any of its agents.
- Taxpayers must be willing to pay all outstanding tax liabilities.
- Taxpayers must file prior year returns within 60 days.
- Taxpayers cannot propose to defer payment of outstanding tax liabilities.
- Taxpayers cannot be New Jersey resident taxpayers for gross income tax purposes.
- Taxpayers cannot be registered with the division for the taxes they wish to pay under the program.
- Taxpayers cannot be under criminal investigation.

- Taxpayers cannot have been previously contacted regarding their activities in New Jersey.

The division will agree to waive late filing penalties and criminal penalties relating to the tax return and periods subject to a voluntary disclosure agreement. A penalty of 5 percent, which cannot be abated, will be imposed for failure to take advantage of New Jersey's tax amnesty program, which ended June 15. Additionally, the 5 percent late payment penalty will be imposed in all circumstances, and statutory interest will be assessed and calculated at the prime rate plus 3 percent for the tax returns and periods included in the agreement.

New York has a voluntary disclosure and compliance program with the following eligibility requirements:

- Taxpayer must not be currently under audit.
- Taxpayer must not have received a bill for outstanding tax obligations.
- Taxpayer must not be under criminal investigation by a New York state agency or political subdivision of the state.
- Taxpayer must not be seeking to disclose participation in a tax avoidance transaction that is a federal or New York state reportable or listed transaction.

New York will waive all penalties and will not criminally prosecute if otherwise able to do so outside of the program. Statutory interest will not abate.

Connecticut maintains an offshore voluntary disclosure program, following on the heels of the agreement between the Swiss government and the U.S. Department of Justice and Internal Revenue Service regarding the release of the names of U.S. residents suspected of using foreign bank accounts to evade taxes and is pursuing information from the U.S. government relating to Connecticut taxpayers who may have undisclosed assets in Swiss banks. Taxpayers enter the program by sending a cover letter to the Department of Revenue Services stating their intention to participate in the program. In addition to the letter, taxpayers must submit information about the offshore account, including:

- A description of the source of funds or other assets in each account.
- The date the initial deposit was made or the date on which the taxpayer took control or ownership of each account.
- Documentation indicating whether the principal (which includes initial deposits and all subsequent contributions) has been taxed and the tax years involved.
- The amount of potential tax liability.
- Whether the taxpayer participated in the IRS Offshore Voluntary Disclosure Program.

In exchange for making a voluntary disclosure, taxpayers will generally eliminate the risk of criminal prosecution and Connecticut will not impose any civil penalties. Taxpayers will be subject to statutory interest and can participate in the program even if currently under examination.

The following regional states have recently announced attractive tax amnesty programs:

- **Delaware.** The Delaware Division of Revenue has established a tax amnesty program that runs through Oct. 30. The program applies to tax liabilities that were due prior to Jan. 1, and also to corporate, personal income and gross receipts tax; use and gift taxes; lodging, estate, realty transfer and public utilities taxes; tax on the income of estates and trusts; occupational license fees and tax; contractors' and manufacturers license fees and tax; retail and wholesale merchants' license fees and tax; and tobacco product license fees and tax. Penalties and interest will be waived if taxpayers pay any and all outstanding tax liability during the amnesty period or enter into a payment plan that satisfies outstanding tax liabilities by June 30, 2010. A down payment is required by Oct. 30. The division will not assess any tax, penalty or interest for any voluntary tax returns filed under the initiative for periods before Jan. 1, 2004. Tax, penalty and interest may be assessed for subsequent periods. Delaware imposes a 5 percent per month penalty for failure to file timely returns, up to a maximum of 50 percent, as well as severe penalties, up to 75 percent of the balance due, for filing fraudulent returns. Provisions related to the 50 percent limitation on the penalty for failure to file timely returns and the 75 percent limitation on the penalty for any fraudulent returns have been removed beginning Dec. 31.
- **Maryland.** Legislation has been enacted in Maryland allowing for a tax amnesty period through Oct. 30. The amnesty period is applicable to income, withholding, sales and use and admissions and amusement taxes. During this period, taxpayers may file any delinquent returns and pay all tax liabilities or enter into an agreement with the comptroller. The comptroller will waive one-half of the interest due and all civil penalties, except previously assessed fraud penalties. Taxpayers who have more than 500 U.S. employees, and who were previously granted amnesty in 2001 or were eligible for the 2004 Chapter 557 settlement period, are ineligible for the 2009 amnesty program. Taxpayers will not face any criminal charges arising from any filed return or paid taxes during the program.
- **Virginia.** Virginia is offering an amnesty program for any person, individual, corporation, estate, trust or partnership required to file a return or pay any tax administered or collected by the state's Department of Taxation. Virginia will waive all civil and criminal penalties and half of the assessed interest on prior tax year liabilities upon payment of

outstanding tax liabilities and interest. The amnesty period is in effect from Oct. 7 through Dec. 5. For amnesty eligible tax assessments or delinquent return liabilities, all penalties and one half of the accrued interest will be waived upon payment of the full amount of the tax and one-half of the amount of accrued interest due. If an assessment or delinquent return is not eligible for amnesty benefits, or if a taxpayer does not comply with the requirements of amnesty, penalties and interest will not be waived.

If you are considering participation in a state tax amnesty program, now may be a very good time to do so. Prior to participation or disclosure of information, contact a tax professional to evaluate eligibility and to provide guidance and representation through the process.

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