

The NYS Tax Amnesty Program: Hurry, Time Is Running Out !

By Eric L. Morgenthal

The Facts

Taxpayers with outstanding New York State Tax Liabilities should strongly consider taking advantage of the NYS Tax Amnesty Program. Signed into law on May 29, 2002 as Chapter 85 of the Law of 2002, the Tax Amnesty program provides an opportunity for taxpayers to settle their outstanding liabilities with a two percent reduction in the statutory interest rate and without the imposition penalties. The program applies to outstanding Personal Income Tax, Withholding Tax, Sales/Use Tax & Corporation Tax, Franchise Taxes, Excise Taxes and miscellaneous other taxes including those for estates of decedents dying on or before February 1, 2000. Taxpayers who have unpaid assessments, unfiled returns, and tax returns which require amending can utilize this window of opportunity to 'fess up at a reduced cost. However, they will need to act quickly because time is running out. The program is set to expire on January 31, 2003.

It should be noted that the program is not available to all taxpayers. It will not apply for certain businesses with more than 500 employees or for taxpayers who were previously granted tax amnesty under one of the prior programs. It also would not apply if the taxpayer is a part of a criminal investigation or civil/criminal litigation in connection with the applicable tax period.

Online Access

For tax advisors, the concept of tax amnesty may sound familiar. New York State had previously offered similar programs in 1994 and 1996/97. However, this year's program provides taxpayers with enhanced access to their account status and information. The Department of Taxation

and Finance has established a web site (nystaxamnesty.com) exclusively for taxpayers who would like to review the status of their *Statement of Amnesty Account*. The web site contains an online interactive question/answer feature for those who are pondering the opportunity but aren't quite sure of the implications. They can use an online calculator provided for measuring the tax savings obtained through the program. The Department of Taxation web site also allows taxpayers to file prior period returns electronically and accepts payment via both credit card and automatic debit. For those who still don't trust web encryption or who simply prefer doing it the old-fashioned way, the Amnesty Application (Form AM-2) can be printed, completed manually and mailed in with the amended or previously unfiled returns.

If the prior period tax returns cannot be prepared in time, there are a few ways of getting them in under the wire. The taxpayer may file electronically or can mail a letter postmarked by January 31, 2003 with their best estimate of the tax due (all of the tax and half of the interest) along with an indication of the type of tax and periods applied for. Bear in mind that if seeking amnesty for an existing assessment, the tax returns are not required.

Benefits

The Amnesty Program can provide a beneficial result in a number of scenarios. Taxpayers who "lost the audit lottery" can now lick their wounds, pay the tax and move on. These taxpayers only need to complete Form AM-1, list their outstanding assessments and tender payment electronically. With all of the recent media hype about tax shelter abuses, some taxpayers may choose to utilize this opportunity to come clean. Taxpayers involved in

Federal tax shelters are permitted to take part in the program so long as the tax shelter is not as part of a criminal investigation.

Under the Amnesty Program, the applicable rate of interest applied to outstanding liabilities has been reduced two percent below the statutory rate until the program expires on January 31, 2003. After April 1, 2003, the rate of interest doesn't just go back to where it was, it climbs an additional two percent. This would be effective for both existing assessments and future period liabilities.

Caveats

As an advocate for the client, it is the professional's duty not to take any state tax assessment as gospel. It is not impossible that an assessment has been incorrectly asserted. Returns listed as unfiled may have either been either lost or misprocessed by the Tax Department. It would be advisable to check with the client to see if they have saved either the cancelled check or a certified return receipt to prove timely filing and payment.

Other taxpayers who may already be in an installment agreement with the Tax Department may find that the interest rate reduction and penalty abatement have presented them with an even better offer. However, the extended repayment period of a negotiated installment plan may provide the client with a longer payout term that is less constricting upon cash flow. Although installment payments are permitted under the Amnesty Program, full payment must be made for the application by the later of March 15, 2003 or the date specified on the Tax Amnesty bill.

Another incentive of the amnesty relief is that New York State has agreed to bar all administrative, civil and criminal actions relating to tax deficiencies paid under the

program. However, this does not prevent the Department of Taxation and Finance from reporting its newly disclosed findings to the Internal Revenue Service. This information may be compared with IRS master files in Martinsburg, West Virginia to determine whether the state non-filer is also a federal non-filer. Taxpayers should be informed that although the outstanding state tax liabilities are now extinguishable at a reduced rate, the Federal tax liabilities may be imposed shortly thereafter with ALL applicable penalties and interest thereon.

For additional information on the New York Tax Amnesty program, you may visit nystaxamnesty.com or call 1-888-552-FILE and request a copy of Publication AM-101.

Editor's Note: Eric L. Morgenthal, Esq., CPA, is a tax attorney in Smithtown, NY and is a member of the Suffolk County Bar Association - Tax Section.

Attention Family Practice Lawyers: Suffolk P.E.A.C.E. Schedule

Please note and advise your divorcing clients of the next Suffolk P.E.A.C.E. program: February 4; February 11; February 18, 6-8 p.m., each night

Classes will be held at the Cohalan Court Complex, Ceremonial Courtroom, 400 Carleton Avenue, 2nd Floor, Central Islip.

Participants attend *all three sessions*.

For information or to register, call the PEACE hotline at 516-377-PEACE.