

TAXATION

STATE OF MICHIGAN TAX AMNESTY PROGRAM OFFERS BUSINESS AND INDIVIDUAL TAXPAYERS THE OPPORTUNITY TO SETTLE DELINQUENT STATE TAX DEBT AND AVOID COSTLY PENALTY PAYMENTS

by James F. Mauro

State of Michigan (the "State") taxpayers who have failed to file a State tax return or to pay a tax due to the State for tax return periods ending on or before December 31, 2009, may be eligible to take advantage of the State's new tax amnesty program, which is scheduled to begin on May 15, 2011, and end on June 30, 2011.

On October 5, 2010, the State Governor signed this tax amnesty program (the "Program") into law.¹ The Program allows individual and business State taxpayer participants (collectively, "Taxpayers") to resolve eligible unpaid State tax debt for tax return periods (*i.e.*, quarterly, annual and/or monthly) which ended on or before December 31, 2009, at a significantly discounted rate by waiving all outstanding civil penalties currently due and owing, in exchange for full payment of the tax and interest due for the particular tax return period, and eliminating the potential for future criminal prosecution. In contrast to many tax amnesty programs, there is no Taxpayer penalty for failure to participate in the Program.

Who is Eligible for Tax Amnesty?

Under the Program, there are three categories of eligible State tax debt: (1) tax debt caused by failure or refusal to file a tax return; (2) tax debt caused by failure to timely pay; or (3) tax debt caused by an excessive claim for refund.

A Taxpayer is ineligible to participate in the Program if: (1) the Taxpayer is eligible to enter into a voluntary disclosure agreement with the Michigan Department of the Treasury (the "DOT"); (2) the tax is attributable to income derived from a criminal act; (3) the Taxpayer is under criminal investigation or involved in a lawsuit or criminal prosecution for the tax; or (4) the Taxpayer has been convicted of a felony under the Michigan Revenue Act or the Internal Revenue Code of 1986.

Tax Types Covered by Amnesty

Only those State taxes which are administered by the DOT under the Revenue Act³ qualify for amnesty under the Program. Qualifying State tax types include, among others: (1) Individual Income Tax; (2) Withholding Tax; (3) Inheritance Tax; (4) Michigan Business Tax; (5) Motor Fuel Tax; (6) Sales and Use Tax; (7) Single Business Tax; (8) Severance on Oil and Gas Tax; and (9) Tobacco Products Tax.

State Required to Notify Eligible Taxpayers

The DOT was required to notify eligible Taxpayers about the Program no later than April 15, 2011. This notification should, among other things, include information about the Taxpayer's eligibility and the terms and conditions of the Program.

How to Participate in the State Tax Amnesty Program

Taxpayers who wish to participate in the Program will be required to submit an application, file any outstanding initial or amended tax return(s), and full pay the tax and interest currently due and owing with respect to the particular return period after May 15, 2011, but before June 30, 2011 (the "Amnesty Period").

A Taxpayer with unpaid State tax debt for more than one eligible tax return period (quarterly and annual) will not be required to full-pay the total amount of all tax and interest currently due and owing for all eligible unpaid State tax debts. Rather, the Taxpayer's application will be considered on a return period-by-return period basis (*i.e.*, the DOT's determination of amnesty eligibility will be based upon its assessment of whether the Taxpayer full-paid the tax and interest due and owing and filed any delinquent initial or amended return for the particular eligible tax period).

The Benefits of Participating in the Tax Amnesty Program (and the Costs of Non-Participation)

Under State law, additional penalty and interest charges continue to accrue on a Taxpayer's delinquent State tax debt(s) until the unpaid debt(s) is/are paid in full. Moreover, State tax debts -- if left unresolved -- subject a Taxpayer to DOT collection action (*i.e.*, real and/or personal property liens; business closure and/or personal property seizure and sale tax warrants; wage and/or bank account levies). Failure to settle State tax debt(s) prior to DOT collection action can result not only in significantly greater costs to a Taxpayer; it can have a compounding detrimental effect on a Taxpayer's overall ability to meet ongoing financial obligations.

¹ See P.A. 198 of 2010.

² See MCL 205.30C; see also VOLUNTARY DISCLOSURE, Michigan Department of Treasury--Tax Practitioners Quick Links (<http://www.michigan.gov/taxes/0,1607,7-238-43549-156155--,00.html>).

³ See P.A. 122 of 1941.

Taxpayers who have questions regarding Program eligibility and/or participation requirements may contact:



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