

The New York City Tax Amnesty Program

By Eric Morgenthal*

Many of us have clients that conduct business in the five boroughs. If yours haven't been meeting their tax filing obligations, then they may want to take advantage of this limited time tax saving opportunity. In light of the recent success obtained with the New York State Tax Amnesty Program, the New York State legislature had empowered the City of New York to undertake its own amnesty arrangement. On July 31, 2003 the NYC Department of Finance (DOF) issued a press release which announced the program and set forth the groundwork stating some of the details. This article is intended to serve as a summary of the information provided by the DOF at this time.

NYC Tax Amnesty runs from October 20, 2003 to January 23, 2004. The program is generally applicable to business and excise tax matters with the exclusion of sales and use, real estate and personal income taxes.

As with other state tax forgiveness programs, taxpayers granted amnesty will be able to dodge related penalties, and can avoid potential criminal prosecution. They will also be provided with a reduction in the interest. Taxpayers will only be required to tender payment on the deficiency interest accrued since October 20, 2000. However, penalties and interest already paid outside the program will not be refunded if an application is accepted. In fact, refund claims will only be allowed if a mathematical error is discovered in the taxpayer's return.

One word of caution, installment arrangements will not be allowed under this Tax Amnesty Program. To trigger acceptance of an amnesty application, the taxpayer must complete and remit all previously unfiled tax returns along with full payment of both the tax and the reduced interest imposed. Amnesty applications sent with less than full payment will be responded to with a bill. Ultimate acceptance of the amnesty application will then hinge upon the receipt of complete payment within the time period prescribed in the billing notice.

From a procedural standpoint, taxpayer payments made with the amnesty request will not be refunded if an amnesty application is denied. The payment made would instead be



Eric Morgenthal

applied to that taxpayers' outstanding balance. Immediately after denial, the DOF may then continue its collection enforcement activity. On the same note, the taxpayer can resume a protest of the tax once the denial is received. But be careful, the clock on the exercise of an existing protest or conciliation request keeps running while the amnesty application is pending.

NYC TAXES INCLUDED

The program applies to taxes incurred before December 31, 2001 and Commercial Rent/Occupancy Taxes for the periods of May 31, 2001 and prior. But which taxes are included?

Here's the list as indicated by the DOF; Banking Corporation Tax, Cigarette Tax, Commercial Motor Vehicle Tax, Commercial Rent or Occupancy Tax, General Corporation Tax, Horse Race Admissions Tax, Hotel Room Occupancy Tax, Real Property Transfer Tax, Tax on Coin Operated Amusement Devices, Tax on Retail Licensees of the State Liquor Authority, Tax on the Transfers of Taxicab Licenses, Tax upon Foreign and Alien Insurers, Unincorporated Business Tax (for Individuals & Partnerships), Utility Tax and Vault Charges.

NYC TAXPAYERS INCLUDED

It was actually a bit surprising to see which taxpayers can qualify to utilize the Amnesty Program. Taxpayers who had filed all of their NYC tax returns but remitted them late will still be permitted to request an abatement of the penalties and reduction in interest. Even those who have a pending NYC Offer in Compromise can obtain approval so long as their offer has not yet been accepted. Other qualifying taxpayers include those with a Tax Bill or Tax Warrant outstanding that haven't negotiated a payment installment arrangement. In addition, those who are in conciliation or are litigating their NYC tax can submit an amnesty application so long as they agree to withdraw or discontinue their proceedings.

So who's not included? In a nutshell, those with prior agreements in effect and those with existing NYC tax difficulties would not be eligible for amnesty. Prior agreements include previous amnesty arrangements or taxes for which an installment agreement is already in place for that deficiency. Examples of an existing tax difficulty would be those under criminal investiga-

tion (by any NY state or local municipality), those who have been prosecuted or convicted of criminal tax charge and those were the subject of a pending audit on March 10, 2003.

DETERMINATION OF NYC TAX DUE

As with the NYS Tax Amnesty Program, multiple resources have been placed in effect to assist taxpayers with determining whether their tax returns remain unfiled, the amounts of their outstanding warrants and the tax savings benefits of participating. To confirm prior tax filings, you may contact the DOF at (718) 935-6000 or by writing to: NYC Department of Finance, Accounts Examination Unit, 25 Elm Place-3rd Floor, Brooklyn, NY 11201. To inquire about any outstanding warrants you may write to: NYC Department of Finance, 25 Elm Place-4th Floor, Brooklyn, NY 11201 and indicate "Attention: Amnesty" on the envelope. Unfortunately, the DOF has indicated that responses will automatically be mailed to the last business address of record irrespective of the return address stated on the request. Taxpayers who have moved will first need to execute a change of address with the DOF.

FORMS AND ADDITIONAL INFORMATION

As with other tax amnesty programs, multiple web addresses have been established to provide taxpayers with additional information. General information about the NYC Tax Amnesty Program can be obtained at www.nyc.gov/nyctax-amnesty. The web site contains an online interest calculator for taxpayers to measure their savings from participating. If forms for years after 1996 are needed to prepare prior year tax returns, they are available at www.nyc.gov/finance or by calling (718) 935-6739. In addition, the DOF has a Tax Fax service where post 1992 forms can be obtained by calling (718) 935-6114 from a telephone connected to a fax machine. The automated system prompts the caller with a series of questions and then faxes the forms requested. Answers to any additional questions can be obtained by emailing the DOF at <https://www.nyc.gov/html/dof/html/emailamnesty.html>. The DOF has indicated that a response to email inquiries will be provided within 10 business days.

** Editor's Note: Eric Morgenthal is a Tax Attorney in Smithtown, NY, and Chair of the Suffolk County Bar Association Taxation Law Committee. He is a member of the American Institute of Certified Public Accountants and the NYS Society of Certified Public Accountants.*