

LA Tax Amnesty Update

August 17, 2014

The Louisiana Legislature has taken a carrot and stick approach in its latest revisions to the state's tax amnesty program. While the Legislature sweetened the pot for those taxpayers who may be considering applying for amnesty, at the same time, the Legislature added a serious "stick" in the form of doubled penalties to be applied to the unpaid liabilities of those taxpayers who qualify for amnesty but don't or can't take advantage of the program.

The Legislature recently amended the Louisiana Tax Delinquency Amnesty Act of 2013 that required the Department of Revenue to develop and implement a tax amnesty program. If a taxpayer is eligible and complies with all of the requirements, the taxpayer may receive a waiver of a portion of interest and/or penalties for the tax period(s) for the amnesty period. Unlike the 2013 program, the 2014 amnesty period will last for only one month, which is estimated to be Wednesday, October 15 through Friday, November 14, 2014. Although the 2013 legislation provided that only 15% of the penalties would be waived and no interest would be waived during the 2014 amnesty period, the legislation amended the waiver provisions so that 100% of the penalties and 50% of the interest associated with the tax will now be waived. With respect to the 2015 amnesty period, the legislation now provides for 33% of the penalties and 17% of the interest associated with the tax at issue to be waived. After the conclusion of the amnesty period in 2015, the legislation provides that the Department may not implement a new amnesty program until at least January 1, 2025 (although a future legislature could simply enact legislation providing for a new amnesty and repealing this provision).

Double Penalties

The legislation appears intended to force qualifying taxpayers into the program. The new amnesty provisions also subject a taxpayer to "double penalties" if the taxpayer does not apply for amnesty and the taxpayer has a final judgment against him or her or has exhausted all rights to protest taxes owed to the state 90 days prior to either the 2014 or 2015 amnesty period. There are a number of issues with this provision including whether a court would uphold "double penalties" on a final judgment that did not include double penalties and also how the state will collect double penalties from defunct taxpayers or taxpayers that aren't applying for amnesty because they simply don't have the money to pay the liability even at the reduced rate.

Eligibility

The amnesty program is applicable to taxes administered by the Department of Revenue except for motor fuel taxes and penalties for failure to submit information reports that are not based on an underpayment of tax. The following is a list of taxes eligible for amnesty for the 2014 amnesty period: (1) taxes due prior to January 1, 2014 for which the Department has issued an individual or a business proposed assessment, notice of assessment, bill, notice, or demand for payment not later than May 31, 2014; (2) taxes for taxable periods that

began before January 1, 2014; and (3) taxes for which the taxpayer and the Department have entered into an agreement to interrupt the running of prescription until December 31, 2014.

Requirements

The primary requirement for amnesty approval is the payment of all of the tax, all fees and costs, if applicable, and any interest due upon filing the amnesty application. Unlike in 2013, a taxpayer who disputes a portion of the amount of delinquent tax may still be eligible for amnesty if he or she remits a “compromise amount” plus applicable interest and penalties, if any, to the Department during an amnesty period. If the Secretary approves the compromise amount, the taxpayer will be granted amnesty, but if the Secretary rejects the compromise amount, amnesty will not be granted, the taxpayer will be responsible for the full amount of tax, penalties, interest, and fees prior to his/her application, and the money paid to the Department as the compromised amount will be allocated toward payment of the taxpayer’s delinquent tax debts. Although installment agreements were not allowed in the 2013 amnesty period, taxpayers who are not involved in field audits or litigation have the option of paying the tax and any applicable fees, costs, and interest in installments during the 2014 and 2015 amnesty periods subject to certain provisions (such as a 20% down payment and fixed, monthly, equal, timely payments that do not extend more than six months). Each of the monthly payments must be via auto-draft from the taxpayer’s bank account, and a taxpayer’s failure to fulfill his or her obligations under the installment agreement will forfeit amnesty and cause the taxpayer to be obligated to pay the entirety of the delinquent tax, interest, penalties, and fees. Existing installment agreements will be replaced with amnesty installment agreements when approved. Transferable tax credits may not be used as a form of payment.

The amnesty program requires many additional agreements or waivers on behalf of the taxpayer. For instance, participation in the amnesty program must be conditioned upon the taxpayer’s agreement that the right to protest or initiate an administrative or judicial proceeding is barred for the specific tax and tax period for which the amnesty is granted, and the applications must include a written waiver of all rights, restrictions, and delays for assessing, collecting, or protesting taxes and interest due. Taxpayers who seek amnesty and are involved in field audits or litigation must include all issues and all eligible periods involved in the audit or litigation and agree to the following: (1) to abide by the Department’s interpretation of the law with respect to issues involved in the audit or litigation resolved through amnesty for all taxable periods for the subsequent three years following the year in which amnesty is granted, (2) to abide with the Department’s interpretation of the law at the time such returns are filed, and (3) if involved in litigation, to pay all applicable attorney’s fees pursuant to La. R.S. § 47:1512 (which allows the Department’s privately employed counsel to recover a reasonable amount of attorney fees and costs up to ten percent of the tax, penalties, and interest at issue) and their own costs of litigation. Those taxpayers who have filed suit under the payment under protest procedure must agree that, upon approval of the application, the Department may release their payment from escrow and apply it in accordance with the grant of the amnesty. Those taxpayers with Department-filed liens against their property or against whom the Department has initiated the assessment and distraint procedure are required to pay any and all lien fees associated with the taxpayers for which amnesty is applied.

Effect of Filing

The filing of an amnesty application makes the tax, interest, and penalty immediately due and payable (except when the taxpayer has been authorized to make installment payments of such amounts); subject to distraint; ineligible for refund, credit, or a claim against the state, with a limited exception for net operating losses; and ineligible for redetermination by the Board of Tax Appeals or by the courts through the payment under protest procedure. Interest will not be paid on refunds for those amounts previously collected by the Department from a taxpayer for a period for which amnesty is granted. Taxpayers who file amnesty applications retain their administrative and judicial rights of appeal with respect to any additional tax assessed by the Department, and the Department may impose penalties on the difference between the amount shown on the amnesty application and the correct amount of tax due and may impose a cost of collection penalty not to exceed 20% of the additional deficiency, except that no penalty may be imposed where the deficiency resulted from an IRS adjustment to the taxpayer's federal return and the taxpayer provided the Department notice of such adjustment within 60 days of receipt of the notice or if the taxpayer's application for amnesty was based on a proposed assessment or notice of assessment. Taxpayers who participate in amnesty may be subject to a negligence penalty or a penalty of \$100, whichever is greater, if they fail to comply with any payment and filing provision administered by the Department for any of the taxable periods in the subsequent six years following the year in which amnesty was granted.

Qualifying taxpayers with unpaid liabilities should strongly consider whether to apply for amnesty. Qualifying taxpayers who don't apply for amnesty are going to be subjected to double penalties. The Department of Revenue will undoubtedly provide additional guidance prior to implementation of the program and, if you have questions, consult your tax advisor.