

Tax Bulletin

Illinois' Tax Amnesty Commences October 1, 2010

In an effort to uncover and collect, or accelerate the receipt of, additional tax revenues, the State of Illinois has enacted a tax amnesty program. This program provides taxpayers with an opportunity to pay previously undisclosed tax liabilities, or settle outstanding tax disputes with the state, without having to pay interest or penalties on the underlying tax. However, if taxpayers do not take advantage of this program, they may find themselves having to pay double the amount of the normal interest and penalties on these tax liabilities.

The Amnesty Program

The state's new tax amnesty program (P.A. 96-1435) (the "Amnesty Program") will commence on October 1, 2010 and end on November 8, 2010 (the "Amnesty Period"). The Amnesty Program is available for all taxes administered by the Illinois Department of Revenue ("Department") other than the motor fuel use tax. To participate in the Amnesty Program, a taxpayer must make full payment to the Department during the Amnesty Period of taxes owed with respect to tax periods beginning on or after July 1, 2002 and ending on or before June 30, 2009. If eligible tax liabilities are paid in full during this period, the Department will waive all penalties and interest on such taxes and will be precluded from seeking civil or criminal sanctions for the late payment of such taxes.

The Amnesty Program is generally open to all taxpayers who have an eligible tax liability to the State of Illinois, including taxpayers who are undergoing an audit or have a case pending before the Office of Administrative Hearings. A tax liability is not eligible for the Amnesty Program if the taxpayer: (1) owes only penalties or interest to the state (i.e., there is no outstanding tax liability); (2) is currently a party to a criminal investigation related to any state tax liability; or (3) is currently in civil court disputing a state tax liability. However, a taxpayer in civil court can still

participate in the Amnesty Program by dismissing the civil case and paying the tax during the Amnesty Period.

Penalties for Not Participating

If a taxpayer is eligible for the Amnesty Program but does not participate (regardless of whether he or she knows about the program or is aware of the tax liability), the Department will double all interest and penalties that are otherwise due on the tax liability (the "Amnesty Penalty"). Thus, if a taxpayer has a current tax liability or thinks there is a possible future adjustment that will result in a tax liability (e.g., the taxpayer expects a tax deficiency from a pending audit that will not be completed prior to the end of the Amnesty Period), the taxpayer should consider estimating and paying the tax liability during the Amnesty Period to avoid double interest and penalties. The Department recently finalized and published its Emergency Amnesty Regulations under the program, which provide that: (1) taxpayers will be able to claim refunds for overpayments paid during the Amnesty Period in certain limited circumstances; (2) a tax deficiency resulting from a change in the taxpayer's federal income tax return that was not deemed final during the Amnesty Period will not be subject to the Amnesty Penalty; and (3) taxpayers will be able to avoid the doubling of penalties (but not the doubling of interest) if they can demonstrate reasonable cause for not participating in the Amnesty Program.

What to Do Now

To qualify for amnesty, in addition to paying the eligible tax liability in full during the Amnesty Period, the taxpayer must file either an original tax return for the taxes owed (if these taxes were not previously reported) or an amended tax return reporting the additional taxes due (if the taxes were previously incorrectly reported). Separate payments should be

made for each eligible tax liability to ensure proper application of the payment by the Department. The payment must be made in cash, by check, guaranteed remittance or ACH debit. In certain circumstances, the Department will also permit taxpayers to make a payment by claiming an offset of a verified overpayment or Department issued credit memorandum.

Clients who owe outstanding tax balances to the Department, or who have exposure to Illinois tax liabilities being imposed in the future, should consult with their tax professionals for more information concerning their eligibility for the Amnesty Program, how the program works and other factors that should

be considered prior to participating in the program. A member of Vedder Price's Tax Group is available to answer any questions you have regarding the Amnesty Program and to assist you in determining whether you are eligible for, and should take advantage of, the Amnesty Program.

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The Vedder Price Tax & Estate Planning Group

Business Tax Planning & Controversy

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