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STATE & FEDERAL TAX PRACTICE

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61Days!
Kentucky Tax Amnesty October 1-November 30, 2012

Erica Horn

The Kentucky Department of Revenue (“Department”) announced Thursday, September 20, 2012 that the Tax Amnesty Program (“Program”) authorized by the 2012 General Assembly will begin October 1, 2012 and end November 30. The Program allows taxpayers to pay back taxes without penalties or fees and only half of the interest due.

Eligible Tax Periods

Eligibility is limited to taxable periods ending after December 1, 2001, but prior to October 1, 2011.

Who is eligible?

The Department has identified four categories of taxpayers eligible for the Program. These four categories include taxpayers who, for the eligible tax periods: (1) did not file a required return; (2) are amending the tax liability on a previously filed tax return; (3) have an outstanding tax liability; and (4) have omitted personal or public service company property.

According to the Department, Taxpayers with a protest pending against an assessment may take advantage of Amnesty by paying “the entire tax liability or a portion of the assessment”. What is meant by “the entire liability or a portion of the assessment” is not clear. Further guidance is being sought from the Department.

BEWARE: Any liability remaining under protest after November 30, 2012 and due after the exhaustion of the appeals process will be subject to the increased interest rate, penalties and fees attributable to eligible amounts not paid during the Amnesty period. These additional amounts are described below. Also, any amounts paid under Amnesty are non-refundable.

Taxpayers with liabilities relating to a criminal investigation or for tax periods ending before December 1, 2001 or after October 1, 2011 are **not** eligible for the Program.

Payment Required

Taxpayers must pay tax for all eligible and **non-eligible** tax periods. That is, a taxpayer registering and paying tax in Kentucky for the first time must pay all back taxes due for the eligible tax periods **and** taxes for the period October 1, 2011 through date of payment. The only periods that are not due and payable are those subject to an outstanding protest or those that have not yet become due.

Corporate officers must pay all assessed corporate liability and applicable individual liability.

Short-term payment plans will be considered for taxpayers who can demonstrate severe financial hardship. In order to be considered, the taxpayer must attach a letter describing his/her financial circumstances (and may be required to submit additional documentation), **pay 25% of the total tax liability due** and complete all payments no later than May 31, 2013. Interest will accrue at the tax interest rate as defined in KRS § 131.183 on Amnesty eligible periods from October 1, 2012 until the liability is paid in full.

What taxes are not eligible for Amnesty?

Taxes levied by authorities other than the Department of Revenue are not eligible for Amnesty. This means that real property taxes levied and collected locally, property taxes on motor vehicles and motor boats collected by county clerks, and property taxes on tangible and intangible personal property payable to a local official do not qualify for Amnesty. Additionally, certain penalties imposed on dealers or manufacturers of cigarettes are not eligible for amnesty. These penalties are described in KRS §§ 131.630 and 138.205.

Unregistered businesses

To be considered for Amnesty, an unregistered business must register with the Commonwealth, submit an “Amnesty application package”, and must file/pay all appropriate tax returns for all periods. Businesses may register using the Commonwealth’s Business One Stop Portal at <http://onestop.ky.gov> or by completing a Kentucky Tax Registration Application available on the Department’s website or at any Department of Revenue Taxpayer Service Center.

What to submit to the Department of Revenue

The following information should be submitted to the Department of Revenue, P. O. Box 6950, Frankfort, KY 40602: Tax Amnesty Application; amended reports or tax returns if the amounts have been changed; supplemental information if required; applicable returns; payment in full. The Tax Amnesty Application is expected to be available on the Department’s website.

Taxes or CONSEQUENCES!

The penalties for failing to participate in the Program are substantial if amounts for eligible periods are later determined to be due. First, the interest rate on amounts not paid during Amnesty on Tax Amnesty eligible bills will be increased 2%. Second, a number of penalties and fees may be applied that could add to 100% of the tax due. These penalties include: (1) a 25% cost of collection fee; (2) 25% assessment fee for taxes which are assessed and collected after the amnesty period for taxable periods ending or transactions occurring prior to October 1, 2011; (3) 50% non-filed return fee for eligible periods; and (4) an additional 25% fee on eligible liabilities discovered through audit.