



Arizona's 2016 Amnesty Program is Better and Worse Than Last Year's Program

This month's state and local tax (SALT) column explains how Arizona's new amnesty program differs from last year's amnesty program and points out that there may be better ways for some taxpayers to resolve outstanding tax liabilities.

Thrilled at recovering more than \$55 million during last year's tax amnesty period — far more than the \$15 million projected recovery — Arizona Gov. Doug Ducey recently approved a bill that establishes a tax amnesty period in Arizona for the second consecutive year. The bill requires the Arizona Department of Revenue (Department) to conduct the program, officially known as the "tax recovery program," for a two-month period from Sept. 1, 2016 through Oct. 31, 2016.

Parallels to Arizona's 2015 Amnesty Program

Like last year's program, Arizona's 2016 tax amnesty program:

1. Requires the Department to waive all civil penalties and interest for tax liabilities that have been or could be assessed during the liability period for taxpayers who comply with the requirements of the program;
2. Applies to all taxes and surcharges administered or collected by the Department, except luxury and withholding taxes;
3. Covers different tax periods based on the type of tax return involved. For taxpayers filing annual returns, such as income tax returns, the program applies to all taxable periods ending before Jan. 1, 2014. For all other taxpayers, the program applies to any taxable period ending before Feb. 1, 2015;
4. Requires taxpayers to submit a "complete and correct application" on a form provided by the Department. The application must identify the tax liability, the qualifying period, and other information that the Department may require when it develops the application;
5. Requires taxpayers to include the appropriate tax returns and reports with the application, including amended returns and reports, if appropriate. If the application is based on an established yet unpaid tax liability, the taxpayer must include a copy of the latest billing notice;
6. Requires that applications be filed during the two-month amnesty period;
7. Provides that taxpayers who already paid any penalties or interest during the liability period are ineligible for a credit or refund for those payments as part of the program;
8. Requires taxpayers who participate in the program to forfeit all administrative and judicial appeal rights related to the tax liabilities included in their applications; and
9. Restricts the following categories of taxpayers from participating in the program:



by James G. Busby, Jr., CPA

James G. Busby, Jr., CPA, is a state and local tax attorney at The Cavanagh Law Firm. Busby previously worked in the SALT departments at Arthur Andersen and Deloitte & Touche. Before entering private practice, Busby was in charge of all transaction privilege (sales) tax audits at the Arizona Department of Revenue. If you have any questions, please contact the author. He can be reached at (602) 322-4146 or JBusby@CavanaghLaw.com.

- Taxpayers who entered into a closing agreement with the Department for the tax period covered by the application;

- Taxpayers who were a party to a criminal investigation or proceeding that was pending on Jan.1, 2016; and

- Taxpayers who have been the subject of past tax-related criminal investigations that resulted in a conviction, a guilty plea, or a plea of no contest.

Changes From Last Year's Amnesty Program

The most welcome change is that, unlike previous Arizona amnesty programs, taxpayers who participate in the 2016 program may pay the tax due over three years. Taxpayers who select this option must pay at least 30 percent of the tax by Oct.31, 2016, at least 60 percent by Oct.31, 2017, and the balance by Oct. 31, 2018. The Department is not allowed to abate the penalties and interest until the tax is paid in full.

But, unlike the 2015 amnesty program, taxpayers whose “tax liability due is the subject of an audit being conducted” by the Department are ineligible for this year’s amnesty program. Because the legislature used the term “audit being conducted” in that provision yet specifically requires the Department to abate or waive all civil penalties and interest for “tax liabilities that have been or could be assessed,” the limitation regarding audit liabilities probably is limited to penalties and interest that could be assessed but have not been because an audit is still pending.

Amnesty is Not Always the Best Option

Five of the six limitations to last year’s amnesty program — all but the requirement that taxpayers pay all tax due under the amnesty program at the time they submit their amnesty application — apply to this year’s amnesty program.

Accordingly, as I explained in my column related to the pros, cons, and alternatives to last year’s amnesty program, some taxpayers with outstanding tax liabilities may be better off pursuing relief by: (1) challenging the alleged liability and seeking recovery of part of their costs and fees if their challenge is successful, (2) pursuing a voluntary disclosure agreement, (3) pursuing a managed audit, (4) pursuing a closing agreement, (5) pursuing relief under Arizona’s Taxpayer Bill of Rights, or (6) pursuing an offer in compromise.

Practice Tip —Savvy CPAs who represent taxpayers that may benefit from the amnesty program surely will make those clients aware of the program. But, rather than encourage or allow their clients to leap into Arizona’s amnesty program without looking into all of their options, they will help their clients identify the pros and cons of the various options available to them to resolve outstanding tax liabilities. ■