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Illinois tax amnesty enacted—Interest and penalties abated or doubled

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On August 16, 2010, the Governor of Illinois enacted tax amnesty legislation by signing Senate Bill 0377 (Public Act 96-1435), an amendment to the Tax Delinquency Amnesty Act. 35 ILCS 745/10. The amnesty program is scheduled to begin October 1, 2010 and end November 8, 2010. The amnesty program is applicable to any person, corporation, or other entity subject to any tax, except for the motor fuel use tax, imposed by any law of the State of Illinois and collected by the Illinois Department of Revenue (hereafter "Department") for the years at issue.

The amnesty program provides that, upon payment by a taxpayer of all taxes due to the State of Illinois for any taxable period ending after June 30, 2002 and prior to July 1, 2009, the Department shall abate and not seek to collect any interest or penalties that may be applicable and the Department shall not seek civil or criminal prosecution for any taxpayer for the period of time for which amnesty has been granted to the taxpayer. Failure to pay all taxes due to the State for a taxable period shall invalidate any amnesty granted under the Amnesty Act. Amnesty shall be granted only if all amnesty conditions are satisfied by the taxpayer.

Unlike the most recent amnesty program, which covered tax periods ending after June 30, 1983 and prior to July 1, 2002, participation in the current amnesty program shall not preclude a taxpayer from claiming a refund for an overpayment of tax on an issue unrelated to the issues for which the taxpayer claimed amnesty or for an overpayment of tax by taxpayers estimating a non-final liability for the amnesty program pursuant to Section 506(b) of the Illinois Income Tax Act. 35 ILCS 5/506(b) (Illinois income tax amendments resulting from federal income tax changes). However, no interest shall be paid to a taxpayer on any refund allowed under the amnesty program.

Moreover, amnesty shall not be granted to taxpayers who are a party to any criminal investigation or to any civil or criminal litigation that is pending in any circuit court or appellate court or the Supreme Court of Illinois for nonpayment, delinquency, or fraud in relation to any State tax imposed by any law of the State of Illinois.

If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for Amnesty, except for any tax liability reported pursuant to Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506 (b)) that is not final (Illinois income tax amendments resulting from federal income tax changes), and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the interest and penalties charged by the Department shall be imposed in an amount that is 200 percent of the amount that the Department would impose otherwise. (A penalty that may be 40 percent).

As with past amnesty programs, there will most likely be issues, including but not limited to: 1) when an amnesty participant can claim a refund for payments made under amnesty; 2) which taxpayers can participate in the amnesty program based on pending tax matters; and 3) which taxpayers can not participate in the amnesty program and are not subject to the doubling of interest and penalties. In an attempt to address some of these issues, the Illinois Department of Revenue has indicated that emergency amnesty program regulations are forthcoming. ■

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