

News & Alerts

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Virginia Announces 2017 Tax Amnesty Program

The Virginia Department of Taxation has announced a tax amnesty program to be available September 13, 2017 through November 14, 2017.

Amnesty Benefits

Virginia's 2017 Tax Amnesty Program allows eligible taxpayers favorable terms to satisfy outstanding tax debt starting September 13 through November 14, 2017. The program allows taxpayers to pay only the tax due and half of the interest due on eligible bills and delinquent tax returns. All remaining interest and penalties will be waived.

Amnesty benefits will be granted on a bill-by-bill or return-by-return basis. If, for example, a taxpayer has three outstanding tax bills and three delinquent returns, but cannot pay all of the tax and half of the interest for all items, the taxpayer may still participate in amnesty to satisfy some of the amnesty eligible tax bills and/or delinquent returns. The taxpayer may send payment designating payment of only two amnesty eligible tax bills under amnesty and receive amnesty benefits for those tax bills. The taxpayer would not receive amnesty relief for the non-designated tax bill or the three delinquent returns. Taxpayers are not required to satisfy all outstanding tax bills and delinquent returns simultaneously in order to participate in amnesty.

Payments must be postmarked by November 14, 2017 to qualify for amnesty benefits. Payments sent to the Department without referencing a specified tax bill number will be applied to tax bills that are amnesty eligible first, from the smallest amnesty amount due to the largest amnesty amount due, and then to non-amnesty eligible tax bills from newest to oldest.

Eligible Taxpayers and Taxes

Those who have not filed returns for income, sales and other taxes administered by the Virginia Tax Department may receive amnesty benefits for returns that were due more than 90 days prior to September 13, 2017.

In order to qualify, bills must be related to an amnesty eligible period and have an assessment date on or before June 15, 2017; returns must be applicable to an eligible period.

Eligible Periods for Selected Taxes under the Virginia Tax Amnesty Program

Tax	Periods Eligible for Amnesty
Bank Franchise Tax	Taxable Year 2016 and prior
Corporate Income Tax	Taxable Year 2015 and prior
Employer Income Tax Withholding	Month of April 2017 and prior
Estate Tax	Returns due by March 30, 2008 and prior
Fiduciary Income Tax	Taxable Year 2015 and prior
Individual Consumer's Use Tax	Returns due by May 1, 2017 and prior
Individual Income Tax	Taxable Year 2015 and prior
Inheritance Tax	Remainder interests that come into possession before September 15, 2016
Insurance Premiums License Tax	Taxable Years 2013 through 2016
Pass-Through Entity Information Return	Taxable Year 2015 and prior
Retail Sales and Use Tax	Month of April 2017 and prior
Out-of-State Dealer's Use Tax	Month of April 2017 and prior

With certain exceptions, any taxpayer who currently has an outstanding assessment or has not filed a return for any tax administered by the Department, may apply for amnesty.

The following are not eligible for amnesty benefits:

1. Bills and accounts paid before September 13, 2017;
2. Federal tax assessments;
3. Local tax assessments;
4. Bills with an assessment date after June 15, 2017, with certain exceptions for bills issued during the amnesty period;
5. All obligations of a taxpayer under criminal investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade the tax;
6. All obligations of a taxpayer with an active jeopardy or fraud assessment; and
7. Any tax liability attributable to an issue that is the subject of a decision of a Virginia court rendered on or after January 1, 2016.¹

Post-Amnesty Penalty

At the conclusion of the amnesty period, any tax liability that was eligible for amnesty benefits but remains unpaid will be subject to a 20 percent post-amnesty penalty. The penalty applies

¹ 1. The claim of Exception 1 to the addition relating to intangible expenses under Va. Code § 58.1-402 A 8, which was at issue in *Kohl's Department Stores, Inc. v. Department of Taxation*, Case No. 760CL 12-1774 (Cir. Ct. of the City of Richmond, Feb. 3, 2016)

2. The denial of a request for an alternative method of allocation and apportionment under Va. Code § 58.1-421, which was at issue in *Corporate Executive Board v. Department of Taxation*, Case No. CL13-3104 (Cir. Ct. of Arlington County, November 30, 2015), dismissed by the Virginia Supreme Court (June 9, 2016).

to unpaid taxes only, not to outstanding balances of penalties or interest. The 20 percent amnesty penalty will be in addition to all other penalties.

Amnesty Procedure

An application form is not required for amnesty. In order to receive the amnesty benefits, taxpayers are required to file all relevant tax returns and associated documentation, such as statements of income, W-2s, etc. as would have been required if the return had been filed timely and properly during the amnesty period beginning on September 13, 2017 and ending on November 14, 2017. Taxpayers who under-reported income, or overstated exemptions or deductions must file an amended return during the amnesty period beginning on September 13, 2017 and ending on November 14, 2017 to receive amnesty benefits. Payment of any additional tax must accompany the return.

Taxpayers who file returns that are not under audit for an amnesty eligible tax and an amnesty eligible period without payment or with insufficient payment will be assessed for any additional tax, penalties and interest due. If the assessment is paid under the amnesty terms by the end of the amnesty period, or within 30 days of the date the assessment was issued, whichever is later, the taxpayer will receive amnesty benefits.

An interest rate of 5 percent will be used to determine the interest on previously unfiled returns or underreported income. Interest will be calculated from the due date of the return through September 12, 2017.

Note that the amnesty does not provide a limited look-back period, therefore all delinquent taxes and returns for which the statute of limitations is open would have to be paid under the amnesty program.

The Department will continue normal collection activities before, during, and after amnesty. A taxpayer who chooses to wait to pay an assessment until the amnesty period begins faces the risk of collection action. Audits, liens, padlockings, revocations, and pending court actions will not cease during the amnesty period.

Payment Plans

Taxpayers who have entered into a payment plan with the Department or any private collection agency contracted by the Department prior to the beginning of the amnesty period will be permitted to participate in amnesty if the bill is otherwise amnesty eligible. However, in order to receive amnesty benefits, the bill must be paid in full during the amnesty period according to amnesty terms. Such taxpayers will not be subject to the 20 percent amnesty penalty provided they remain current on their pre-existing plans. However, if the taxpayer fails to make timely payments or otherwise fails to comply with the terms of any pre-existing plan, either during or after the amnesty period, the 20 percent penalty will be applied.

Additionally, taxpayers may enter into payment plans during the amnesty period. Such taxpayers will not be subject to the 20 percent amnesty penalty provided they remain current on their payment plans. If the taxpayer fails to make timely payments or otherwise fails to comply with the terms of any payment plan at any point during or after the amnesty period, the 20 percent penalty will be applied to the remaining balance. Taxpayers who enter into payment plans during the amnesty period may only receive amnesty benefits if the bill is paid in full according to amnesty terms during the amnesty period.

Appealed Assessments

Taxpayers who have an appeal pursuant to Va. Code § 58.1-1821 pending during amnesty on an amnesty eligible assessment may receive amnesty benefits by paying the full amount of the tax and one half of the interest on the assessment. When the Department receives an amnesty payment for an assessment with a pending appeal, such payment will be deemed to be the taxpayer's withdrawal of the current appeal and waiver of the right to an additional administrative or judicial appeal.

Offers in Compromise

The offer in compromise process under Va. Code § 58.1-105 will continue during amnesty and taxpayers who are the subject of an offer in compromise will be eligible for amnesty benefits on amnesty eligible assessments. A taxpayer may choose to withdraw an offer on an amnesty eligible bill by paying the full tax and one half of the interest due under the amnesty terms during the amnesty period.

Keeping up with the latest tax law changes is more challenging than ever. Hirschler Fleischer's Federal and State Tax Planning Group is ready to assist you through the changing tax environment to realize the goals you have for your business and personal assets. Please contact our experienced tax and business lawyers for assistance with your business and personal planning.

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