



A Dash of SALT

Five Important Limitations and Six Alternatives to Arizona's Amnesty Program

This month's state and local tax (SALT) column summarizes five limitations and six alternatives to Arizona's upcoming amnesty program.

Many taxpayers will extinguish outstanding Arizona tax liabilities without paying interest or penalties during the state's amnesty program, which runs September 1, 2015 through October 31, 2015.

In my May 2015 column, I summarized some of the benefits of the program. However, not all taxpayers qualify for the amnesty program, and there are better alternatives for some taxpayers.

Five Important Limitations to Arizona's Amnesty Program

Some of the limitations to Arizona's upcoming amnesty program include:

1. Amnesty Participants Forfeit Appeal Rights

Upon submitting applications to participate in Arizona's upcoming amnesty program, taxpayers forfeit all administrative and judicial appeal rights related to the tax liabilities included in the applications.

2. Arizona's Nasty Statute of Limitations

Arizona's statute of limitations is not affected by Arizona's amnesty program and, unlike the normal three-year statute of limitations in effect in many states and in matters involving the IRS,

Arizona's normal statute of limitations is four years from the time that a tax return was due or filed, whichever period expires later. As with the IRS, in situations where the income on a return was understated by 25 percent or more, Arizona's statute of limitations is six years. And, as with the IRS, in cases involving fraud or failure to file a return, there is no statute of limitations in Arizona.

3. Amnesty Does Not Apply to City Sales Taxes

Arizona's amnesty program does not apply to city sales taxes, not even those that are collected by the Arizona Department of Revenue (Department).

4. Amnesty Requires Original or Amended Returns

The program requires taxpayers to submit the appropriate original or amended return(s), which may not be too burdensome for taxpayers who only have an outstanding tax liability during one reporting period. But some types of tax returns are due monthly rather than annually and some taxpayers have outstanding tax liabilities that cross multiple periods.

5. Amnesty Requires Immediate Payment of All Tax



Taxpayers who participate in Arizona's amnesty program must pay the tax due at the time they submit their amnesty application.

Six Alternatives to Arizona's Amnesty Program

There are at least six alternatives to Arizona's amnesty program. Depending on each taxpayer's individual facts and circumstances, one or more of these alternatives may be better for a particular taxpayer with an alleged outstanding tax liability than Arizona's amnesty program. A short description of each alternative, along with some of their pros and cons, is included below.

1. When Justified, Don't Give In

Taxpayers with strong cases should not feel compelled to give in and pay disputed taxes during Arizona's amnesty period just because the penalties and interest will be waived. Not paying any tax that is not lawfully due is better than just getting the penalties and interest abated on tax that isn't lawfully due. And, because Arizona just increased the amount of fees taxpayers may recover when they prevail in a tax dispute, taxpayers no longer need to feel as much pressure to give in when faced with questionable assessments as they may have in the past.

Except for property tax appeals, Arizona is not a "pay to play" state, so taxpayers do not have to pay disputed tax assessments to appeal them. But, interest continues to accrue during the appeals process. So, taxpayers who

want to hedge their bets during the appeal process may stop interest from accruing by paying the disputed tax under protest.

2. Pursue a Voluntary Disclosure Agreement

CPAs in public practice may try to negotiate voluntary disclosure agreements with the Department for their client under which the CPA will only identify their client to the Department if the Department agrees to enter into an agreement with their client under terms that are satisfactory to the client. So, for example, a CPA may be able to negotiate an agreement with the Department for a client who underreported taxes for seven years under which the taxpayer only has to pay tax and interest for the last four years, and the Department agrees not to audit prior periods or pursue penalties. Depending on the type of tax involved, the Department may not require the taxpayer to file original or amended tax returns as part of the voluntary disclosure agreement.

3. Pursue a Managed Audit

Taxpayers may offer to enter into managed audit agreements with the Department. Under such agreements, the Department agrees not to assess

penalties or interest on any liabilities that are uncovered during the course of the audit as long as the liability is paid within forty-five days of the assessment and the Department does not find that the taxpayer committed fraud, tax evasion, or collected monies that were represented as tax but not remitted to the state. In return, the taxpayer or its representatives must do most of the leg work for the Department to review.

4. Pursue a Closing Agreement

Taxpayers may enter into closing agreements with the Department to resolve issues based on the risks and perils of litigation. So, for example, if the Department audits a taxpayer and issues an assessment for \$10,000 for a particular issue but the Department and the taxpayer agree that the taxpayer has a sixty percent chance of prevailing if she goes to court over the issue, they may enter into a binding agreement to resolve that issue by having the taxpayer pay \$6,000.

5. Pursue Relief Under the Taxpayer Bill of Rights

As explained in my June 2014 column, Arizona's Taxpayer Bill of Rights allows the Department to grant relief to entire classes of taxpayers in situ-

ations where there was an "extensive misunderstanding or misapplication" of any of the tax laws administered by the Department. Relief may come in the form of the abatement of some, or all, of the tax, penalties, and interest that otherwise would have been due for any particular period.

6. Pursue an Offer in Compromise

Finally, the Department can make payment arrangements, and even abate some of the taxes that would otherwise be due, for taxpayers who agree that they owe the tax but are unable to pay it. To pursue such arrangements, taxpayers must submit an offer in compromise, which require the taxpayer to disclose detailed information about their income, expenses, assets, and liabilities. If the taxpayer fails to timely make payments under such an agreement, they Department can void the agreement and pursue collection of the entire deficiency.

Practice Tip! – Rather than encourage or allow their clients to leap into Arizona's amnesty program without looking into all of their options first, savvy CPAs help their clients identify the pros and cons of the various options available to them to resolve outstanding tax liabilities. **AZ CPA**

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