

Arizona's 2016 Amnesty Program Is Better And Worse Than Last Year's Program

by James G. Busby Jr.



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In this article, Busby explains how Arizona's new amnesty program differs from last year's and points out that there may be better ways for some taxpayers to resolve outstanding tax liabilities.

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Thrilled at recovering more than \$55 million during last year's tax amnesty period — far more than the \$15 million projected recovery¹ — Arizona Gov. Doug Ducey (R) recently approved a bill that establishes a tax amnesty period in Arizona for the second consecutive year.²

The bill requires the Arizona Department of Revenue to conduct the program, officially known as the “tax recovery program,” for a two-month period from September 1, 2016, through October 31, 2016.³

Parallels to Arizona's 2015 Amnesty Program

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

- requires the DOR 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;⁴

- applies to all taxes and surcharges administered or collected by the department, except luxury and withholding taxes;⁵
- 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 tax periods ending before January 1, 2014. For all other taxpayers, the program applies to any tax period ending before February 1, 2015;⁶
- 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;⁷
- 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;⁸
- requires that applications be filed during the two-month amnesty period;⁹
- 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;¹⁰
- requires taxpayers who participate in the program to forfeit all administrative and judicial appeal rights regarding the tax liabilities in their applications;¹¹ and
- restricts the following categories of taxpayers from participating in the program¹²:
 - taxpayers who entered into a closing agreement with the department for the tax period covered by the application;

¹Report of the 2015 Tax Recovery Program, available at <https://www.azdor.gov/Portals/0/TaxRecovery/TaxRecovery2015FinalReport.pdf>.

²HB 2708.

³*Id.*

⁴HB 2708, section 17(B).

⁵HB 2708, section 17(Q)(2).

⁶HB 2708, section 17(B).

⁷HB 2708, section 17(D) and (F).

⁸HB 2708, section 17(F).

⁹HB 2708, section 17(D) and (Q)(1).

¹⁰HB 2708, section 17(K).

¹¹HB 2708, section 17(I).

¹²HB 2708, section 17(E).

- taxpayers who were a party to a criminal investigation or proceeding that was pending on January 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 October 31, 2016, at least 60 percent by October 31, 2017, and the balance by October 31, 2018.¹³ The DOR is not allowed to abate the penalties and interest until the tax is paid in full.¹⁴

But unlike the 2015 amnesty program, taxpayers whose “tax liability due is the subject of an audit being conducted” by the DOR are ineligible for this year’s amnesty program.¹⁵ Because the Legislature used the term “audit *being conducted*” in that provision yet specifically requires the DOR 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.¹⁶

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

¹³HB 2708, section 17(F)(2).

¹⁴HB 2708, section 17(J)(1).

¹⁵HB 2708, section 17(E)(5).

¹⁶HB 2708, section 17(E)(5) (emphasis added) and section 17(B).

under the amnesty program when they submit their amnesty application — apply to this year’s amnesty program.¹⁷

Accordingly, as I explained in my column regarding the pros, cons, and alternatives to last year’s amnesty program,¹⁸ 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 the challenge is successful,¹⁹ (2) pursuing a voluntary disclosure agreement,²⁰ (3) pursuing a managed audit,²¹ (4) pursuing a closing agreement, (5) pursuing relief under Arizona’s Taxpayer Bill of Rights,²² or (6) pursuing an offer in compromise.

Practice Tip!

Savvy tax professionals who represent taxpayers that may benefit from Arizona’s 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 considering all of their options, they also will help their clients identify the pros and cons of the various options available to them to resolve outstanding tax liabilities. ☆

¹⁷Busby, “Pros, Cons, and Alternatives to Arizona’s Amnesty Program,” *State Tax Notes*, Aug. 24, 2015, p. 705.

¹⁸*Id.*

¹⁹See Busby, “Arizona Increasing Limits on Attorney Fee Awards in Tax Cases,” *State Tax Notes*, June 22, 2015, p. 929.

²⁰See Busby, “Voluntary Disclosure: An Alternative to Arizona’s Upcoming Amnesty Program,” *State Tax Notes*, Aug. 17, 2015, p. 645.

²¹See Busby, “Arizona’s Little-Known Managed Audit Program,” *State Tax Notes*, Oct. 12, 2015, p. 145.

²²See Busby, “How Entire Classes of Taxpayers May Achieve Relief Under Arizona’s Taxpayer Bill of Rights,” *AZ CPA Magazine*, June 2014, at 10.