

Pros, Cons, and Alternatives to Arizona's Amnesty Program

by James G. Busby Jr.



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In this article, Busby explains some of the pros, cons, and alternatives to Arizona's upcoming tax amnesty program, which is scheduled to run from September through October.

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Arizona Gov. Doug Ducey (R) recently signed SB 1471, which requires the Arizona Department of Revenue to conduct an amnesty program, officially known as the tax recovery program, for a two-month period from September 1 through October 31, 2015.¹

I. Benefits of Arizona's Amnesty Program

The DOR is required 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

II. Tax Types Included in the Amnesty and Applicable Tax Periods

Arizona's amnesty program applies to all taxes and surcharges administered or collected by the department, except luxury and withholding taxes.³

The liability period, or the period that the amnesty program applies to, differs based on the filing period for different types of taxes collected by the department. For taxpayers filing annual returns, such as income tax returns, the program applies to all taxable periods ending before

January 1, 2014.⁴ For all other taxpayers, the program applies to any taxable period ending before February 1, 2015.⁵

III. Requirements Taxpayers Must Satisfy to Participate

To qualify for Arizona's amnesty program, taxpayers must submit a "complete and correct" application form provided by the department.⁶ The application must identify the tax liability, the qualifying period, and other information the DOR may require when it develops the application form.⁷

Taxpayers must include the appropriate tax returns and reports with the application, including amended returns and reports, if appropriate.⁸ If the application is based on an established yet unpaid tax liability, the taxpayer must include a copy of the latest billing notice.⁹

The application must be filed during the two-month amnesty period and include payment of the tax due.¹⁰ 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.¹¹

IV. 6 Important Limitations to the Program

There are several limitations to Arizona's amnesty program. They include:

A. Some Taxpayers Are Ineligible

The following taxpayers are ineligible for the program:

- taxpayers who entered into a closing agreement with the department for the tax period covered by the application;
- taxpayers who were party to a criminal investigation or proceeding that was pending on January 1, 2015; 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.¹²

⁴Laws 2015, Ch. 10, section 19(B)(1).

⁵Laws 2015, Ch. 10, section 19(B)(2).

⁶Laws 2015, Ch. 10, section 19(D).

⁷*Id.*

⁸Laws 2015, Ch. 10, section 19(F).

⁹*Id.*

¹⁰*Id.*

¹¹Laws 2015, Ch. 10, section 19(I).

¹²Laws 2015, Ch. 10, section 19(E).

¹Laws 2015, Ch. 10, section 19(O)(1).

²Laws 2015, Ch. 10, section 19(B).

³Laws 2015, Ch. 10, section 19(O)(2).

B. Amnesty Participants Forfeit Appeal Rights

On submitting applications to participate in the amnesty program, taxpayers forfeit all administrative and judicial appeal rights regarding the tax liabilities included in the applications.¹³

C. Arizona Has a Nasty Statute of Limitations

Arizona's statute of limitations is unaffected by the state's amnesty program and, unlike the normal three-year statute of limitations in effect in many states and in matters involving the IRS, the state's standard statute of limitations is four years from when a tax return was due or filed, whichever expires later. As with the IRS, in situations when 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.¹⁴

D. Amnesty Does Not Apply to City Sales Taxes

Arizona's amnesty program does not apply to city sales taxes, even those collected by the department.

E. 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 have an outstanding tax liability during only 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.¹⁵

F. Amnesty Requires Immediate Payment of All Tax

Taxpayers who participate in the amnesty program must pay the tax due when they submit their amnesty application.¹⁶

V. 6 Alternatives to Arizona's Amnesty Program

There are at least six alternatives to Arizona's amnesty program. One or more of these alternatives may be better for a particular taxpayer with an alleged outstanding tax liability than the amnesty program, depending on the taxpayer's facts and circumstances. Short descriptions of these alternatives, along with some of their pros and cons, are included below.

A. Don't Give In if Justified

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.

Except for property tax appeals, Arizona is not a "pay to play" state, so taxpayers do not have to pay disputed tax assessments in order to appeal them. However, interest continues to accrue during the appeals process, so taxpayers who want to hedge their bets during the appeal process can prevent interest from accruing by paying the disputed tax under protest.

B. Pursue a Voluntary Disclosure Agreement

A tax professional may try to negotiate a voluntary disclosure agreement for a client under which the tax professional will identify the client only if the department agrees to enter an agreement under terms satisfactory to the client. So, for example, a tax professional may be able to negotiate an agreement for a client who underreported taxes for seven years under which the taxpayer has to pay tax and interest only 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 might not require the taxpayer to file original or amended tax returns as part of the voluntary disclosure agreement.

C. Pursue a Managed Audit

Taxpayers may enter into managed audit agreements with the department. Under such agreements, the department agrees not to assess penalties or interest on any liabilities uncovered during the course of the audit as long as the liability is paid within 45 days of the assessment and the department does not find that the taxpayer committed fraud, tax evasion, or collected money represented as tax but not remitted to the state. In return, the taxpayer or its representatives must do most of the legwork for the department to review.

D. 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 60 percent chance of prevailing if she goes to court over the issue, the parties may enter into a binding agreement to resolve that issue by having the taxpayer pay \$6,000.

E. Pursue Relief Under the Taxpayer Bill of Rights

Arizona's Taxpayer Bill of Rights allows the department to grant relief to entire classes of taxpayers in situations in which 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.

¹³Laws 2015, Ch. 10, section 19(G).

¹⁴Ariz. Rev. Stat. section 42-1104.

¹⁵Laws 2015, Ch. 10, section 19(F).

¹⁶*Id.*

F. 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 a payment arrangement, a taxpayer must submit an offer in compromise, which requires the disclosure of detailed information about the taxpayer's income, expenses, assets, and liabilities. If the taxpayer fails to make timely payments under such an agreement, the department can void the agreement and pursue collection of the entire deficiency.

VI. 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 the program without first considering all their options, they will help their clients identify the pros and cons of the various options available to them to resolve outstanding tax liabilities. ☆

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all the answers.*

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where to find them.*

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