

## DESPERATE FOR DOLLARS - NEW YORK STATE ANNOUNCES TAXPAYER AMNESTY PROGRAM

New York's annual multi-billion dollar tax gap - the difference between taxes owed and taxes collected - has led the State to increase enforcement and encourage payment and compliance through its tax incentive programs. The Penalty and Interest Discount Program ("PAID") and the Voluntary Disclosure and Compliance Program are currently available for delinquent taxpayers, but time is of the essence with PAID.

### **PAID (The State knows you owe it money)**

On December 4<sup>th</sup>, 2009, Governor Patterson signed the tax amnesty legislation that authorized the PAID program. The program allows the Department of Taxation and Finance (the "Department") to administer an accounts receivable discount program for certain outstanding tax, fee or surcharge liabilities that are or were imposed under the Tax Law and administered by the Department. The program was established to encourage eligible taxpayers (including individuals, partnerships, estates, trusts, corporation, limited liability companies) to pay off their eligible tax liabilities. This includes liabilities that are fixed and final, and for which an assessment or final determination was issued on or before December 31, 2006. A taxpayer who participates in the program will receive a reduction in the accrued interest and penalties (but no reduction in the actual amount of tax) currently owed on the eligible tax liabilities. **The program began January 15, 2010 and will end on March 15, 2010. To take advantage of the program's savings, the taxpayer must make all payments by March 15, 2010.**

The Department is tasked with initially identifying taxpayers that have assessments and final determinations that are eligible for the program and computing the total amount of tax, interest and penalty due under the program for each of the eligible liabilities. The amount computed will reflect the savings the taxpayer is entitled to if the taxpayer pays the reduced amount due for that liability in full during the program period. A taxpayer's savings will depend on the age of the liability. A taxpayer can save 80% of accrued penalty and interest on unpaid bills issued on or before December 31, 2003 and 50% of accrued penalty and interest on unpaid bills issued after December 31, 2003 and on or before December 31, 2006. The program is a one time opportunity to qualify for the savings. If the taxpayer makes full payment of the reduced amount shown due for an eligible liability during the program period, and, therefore, qualifies for reduction in penalties and interest, then the taxpayer's liability for that assessment or final determination will be deemed to be satisfied in full.

If you believe you are a NYS taxpayer eligible for the PAID program and have not received written notice from the Department of Taxation, you may access information regarding the program at [www.nystax.gov](http://www.nystax.gov) or contact the Department at 518.457.1726. Before you contact the Department with any identifying information; however, we suggest you consult with a tax professional to determine how best to proceed.

**VOLUNTARY DISCLOSURE AND COMPLIANCE PROGRAM (the State does not know you owe it money)**

This program encourages taxpayers who have not paid their taxes to come forward voluntarily and pay what they owe. This program covers all taxes administered by the Tax Department, including income, corporate, and sales and covers all periods. To be eligible, applicants must meet all of the following criteria: **1.)** they must not be currently under audit by the Department; **2.)** they must not have received a bill for the past due taxes that they are disclosing; **3.)** they must not be under criminal investigation by a New York state agency or political subdivision of the state; and **4.)** they must not be seeking to disclose participation in a tax avoidance transaction (commonly known as a tax shelter) that is a federal or New York State reportable or listed transaction. A taxpayer that meets the above criteria may complete the voluntary Disclosure Program Application, which identifies the taxes that are owed and the reason that the taxes were not reported.

The Department will review the application and if it determines that you are eligible, it will provide a Voluntary Disclosure Agreement which will cover those taxes and tax periods that have been identified in the application. The Agreement must be signed and returned along with signed copies of the tax returns that accurately reflect the taxes due.

In order to participate in the program and receive its benefits, the taxpayer must pay any tax and interest that is disclosed in the agreement and the Department will not impose any penalties. If failure to pay taxes was due to a criminal offense, the Department will not prosecute the taxpayer. Any taxpayer that qualifies for the program must **not** do any of the following or will be in violation of the agreement: **1.)** intentionally provide false material information in any of the disclosure documents; **2.)** intentionally omit material information from any of the disclosure documents; **3.)** intentionally fail to pay the back taxes and interest that are part of the agreement and **4.)** intentionally violate the tax law in the future, including failing to pay any taxes.

**TAX ENFORCEMENT**

Given the State's annual budget crisis, the 2009 historic legislation signed to increase civil and criminal penalties for fraud and tax evasion, and the Department's ability to identify and pursue non compliant taxpayers, it is prudent to take advantage of these programs while they are available. The new legislation and focus on increased revenues are a warning signal that tax compliance and enforcement will continue to increase and the Department now has the tools to enforce compliance. The State recently arrested 18 individuals on tax evasion. These were in addition to the 25 earlier arrests of individuals also charged with failure to file tax returns over multiple years. The arrests continue under the State's enforcement initiative and it vows to continue to bring forth additional cases with the coordination of district attorneys across the state.

***Taxpayers should strongly consider consulting a tax professional prior to making contact with the Department and disclosing identifying information.***

***If you have any questions, please contact Nicole R. Tzetzto at 716.843.3859 or ntzetzto@jaeckle.com, Raymond P. Reichert at 716.843.3886 or rreichert@jaeckle.com or Paul A. Battaglia at 716.843.3951 or pbattaglia@jaeckle.com.***

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