



True Insight

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ILLINOIS TAX AMNESTY – FIN48 INCOME PICK-UP OPPORTUNITY!

OVERVIEW

Is it possible to pay more tax and, as a result, generate additional book income in the process? The answer is a resounding YES! Today, Illinois' Tax Amnesty program went into effect and will run through November 8, 2010. The program is designed to raise much needed cash for the financially distressed state. As a result, the rules of eligibility are largely focused on cash generation. Under the program, the Department of Revenue will abate all interest and penalties due from any taxpayer owing any tax to the state for taxable periods ending after June 30, 2002 but prior to July 1, 2009. Amnesty does not apply to motor fuel tax or franchise tax. Also excluded from the program are liabilities currently subject to civil litigation. However, taxpayers can withdraw the litigation and participate in the amnesty program on the amount at issue.

Companies not participating in the amnesty program will be subject to a doubling of interest and penalties

for eligible liabilities. This could, in effect, double the amount owed to the State, based upon a 40 percent penalty rate and current interest rates.

To the extent a company has a FIN48 (ASC 740) or FAS5 (ASC450) reserve for taxes, interest and penalties, related to an Illinois tax issue eligible for amnesty, it may be able to pay the tax under amnesty and release the reserves for penalties and interest. This may result in an income pick-up for book income purposes. Alternatively, non-participation may require an increase in reserves to account for additional interest and penalties.

CONSIDERATIONS

All Illinois taxpayers currently under audit or in receipt of a Notice of Deficiency should seriously consider participation in the program.

All taxpayers with a FIN48 reserve or FAS5 issue for Illinois tax matters should consider participation.

All Illinois taxpayers expecting an audit, and knowing that an audit could result in a tax liability should consider quantifying the potential audit liability and participating in the program.

Any non-filers considering the amnesty program should look closely at the Illinois Voluntary Disclosure Program first.

EXAMPLES

- A. Taxpayer has a Notice of Deficiency on a sales and use tax audit for \$100,000. Taxpayer believes that \$50,000 is the true amount owed, so makes a payment under amnesty. For whatever reason, taxpayer fails to request an administrative hearing and the assessment becomes final. Taxpayer will owe double interest and penalties on the entire amount of \$100,000.
- B. Taxpayer has owed money on prior state income tax audits, but is not currently under audit. Taxpayer makes a good faith determination of the liability for the unaudited periods and files under the amnesty period, paying \$100,000. Eventually, the state audits the open periods and finds the taxpayer only owed \$80,000. Taxpayer will not owe interest and penalties and will be entitled to a refund of \$20,000. (It is important to note that each tax period is viewed separately, so the overpayments and underpayments are separate events)
- C. Same facts as B, except that the ultimate liability is \$150,000. If taxpayer pays the \$50,000 additional tax, plus double interest and penalty on the \$50,000 within 30 days, then the original amount paid of \$100,000 will not be subject to penalties and interest. Otherwise, the entire

\$150,000 is subject to double interest and penalty.

- D. Taxpayer does not participate in the amnesty program and eventually has a federal change that results in increased Illinois income tax liability. Since the only change is from federal, double interest and penalty will not apply.

CAN YOU AFFORD TO IGNORE THE ILLINOIS TAX AMNESTY OPPORTUNITY?

THINGS YOU SHOULD KNOW

True Partners Consulting is focused on identifying and developing innovative solutions to contribute to the overall success of our clients. Please contact a member of our team to see how we can contribute to your success.

Emergency regulations can be found at the Illinois Department of Revenue website.

James H. Kane
Managing Director
 (312) 235-3307
 James.Kane@TPCtax.com

Mariano Sori
Managing Director
 (312) 588-3408
 Mariano.Sori@tpctax.com

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