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Client Alert: Ohio's General Tax Amnesty Program Offers Tax Savings Opportunity

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Beginning **May 1, 2012** and continuing through **June 15, 2012**, the State of Ohio is conducting a General Tax Amnesty Program that under the right set of circumstances could provide significant savings for businesses and individuals with Ohio tax concerns. The General Tax Amnesty Program is separate from the Consumer Use Tax Amnesty Program, which began October 1, 2011 and runs through May 1, 2013. This bulletin briefly explains the procedures for participating in the General Tax Amnesty Program and the benefits to be gained.

General Tax Amnesty

When may taxpayers participate?

- The general amnesty program is open between May 1, 2012 and June 15, 2012.

What taxes are covered under the program?

- The program applies to the following taxes: a) personal income tax including pass-through entities, b) vendor's sales tax, c) seller's use tax, d) corporate franchise tax, e) county and transit authority sales tax, f) school district income tax, g) estate tax, h) motor fuel tax, i) cigarette tax, j) commercial activity tax, k) natural gas company excise tax, and l) dealer in intangibles tax. Also included are income and school district income taxes required to be withheld by an employer.

What tax periods are covered under the program?

- The program applies only to taxes that were due and payable as of May 1, 2011, which were unreported, underreported or remain unpaid. Thus, there is a year gap between the tax period covered by amnesty and the beginning of the amnesty program.

Are there any restrictions?

- The program is not available on any tax for which: a) a notice of assessment has been issued, b) a notice of an audit has been issued, c) a tax bill has been issued, d) an audit has been conducted, e) an audit is currently being conducted, or f) pertains to a tax period that ends after May 1, 2011.

What will I have to pay?

- If a taxpayer pays the full amount of tax owed and one-half of any interest that has accrued on the tax, the tax commissioner must waive or abate all applicable penalties and the other one-half of interest due, i.e., the taxpayer pays only half the usual amount of interest due in addition to the tax itself.

When must payment be made?

- The taxpayer must submit the required payment within the May 1, 2012 to June 15, 2012 amnesty period along with the application and tax returns in order to qualify for the reduced liability. Payment plans are not available.

Are there any other advantages to participating?

- In addition to the reduced amounts owed, anyone who participates in the amnesty program is immune from criminal prosecution or civil actions with respect to the taxes paid through the program. No assessment may be issued against a person with respect to a tax paid as part of the program. However, tax returns filed as part of this Program remain subject to audit.

How do I enroll in the program?

- A taxpayer must submit (i) a completed and signed Ohio General Tax Amnesty application (this can be obtained at www.ohiotaxamnesty.gov), (ii) completed and signed tax returns for all periods covered by the application, and (iii) full payment of the tax and one-half interest due as shown on the application.

Consumer Use Tax Amnesty Program – Brief Summary

Although the seller's use tax is included in the general amnesty program, the consumer use tax (use tax on purchases made) is not. Those who may have an outstanding consumer use tax liability, including holders of a direct pay permit, must participate in the "Consumer Use Tax Amnesty Program." A consumer that successfully enrolls and participates in the program is responsible for any unpaid consumer use tax on transactions made from January 1, 2009 forward. In exchange for the payment of the tax, the tax commissioner will waive or abate the interest and penalties normally due on the unpaid tax, i.e., you pay tax only. Any consumer use tax liability that exists for periods prior to January 1, 2009 is forgiven. Generally, payment must be made during the amnesty period although a payment plan of up to seven years is possible based on individual circumstances. A consumer who makes the required payments under the consumer use tax amnesty program is immune from criminal prosecution or civil actions with respect to the tax paid through the program. The program is not available to any consumer against whom the Tax Commissioner has issued a use tax assessment.

Conclusion

Ohio's tax amnesty programs create a rare opportunity for taxpayers to assess current tax risks, exposures and liabilities to determine whether amnesty is in their best interest. This requires a careful weighing of the advantages and disadvantages of entering into amnesty with Ohio. We recommend seeking the advice of experienced counsel before entering into any legally binding agreement or exposing potential liability to tax authorities. Taxpayers should be advised of and consider all options to legally minimize tax risks and liabilities.