



State & Local Tax Advisory ■

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Garden State Tax Amnesty in Full Bloom for Two Months

New Jersey is currently offering a tax amnesty program that allows taxpayers to report and pay past-due tax liabilities in exchange for an abatement of most penalties and 50 percent of interest. The amnesty period runs from November 15 through January 15, which necessitates quick action by taxpayers that may benefit from this “limited time only” program.

The amnesty covers all types of taxes administered by the Division of Taxation, including corporate income tax, sales and use tax, and personal income tax. It applies to liabilities that would have been reported on tax returns due on or after February 1, 2009, through September 1, 2017.

Interestingly, there are certain advantages to reporting tax liabilities through the amnesty program rather than the state’s institutional voluntary disclosure program. The single greatest benefit is the amnesty program’s 50 percent interest abatement, which is not offered under the voluntary disclosure program as the Division lacks the authority to do so. In certain other respects, the programs are consistent, including their waiver of otherwise-applicable penalties.

The amnesty eligibility requirements are also much more flexible than the voluntary disclosure program. For example, whereas the voluntary disclosure program is only available to a narrow class of taxpayers that are not under audit and have not been contacted by the Division, there are no parallel disqualifications in the amnesty program. Even taxpayers that have filed an administrative or judicial appeal related to a tax assessment may be granted amnesty subject to the Division’s approval. Accordingly, many taxpayers that would have been ineligible for the voluntary disclosure program will qualify for the amnesty program.

Proceed with Caution

Although the benefits of the amnesty program can be significant, there are several potential drawbacks that should be considered before committing to participate. For example, under the voluntary disclosure program, the Division will agree not to audit or assess tax beyond a four-year lookback period. The amnesty program, by contrast, does not provide any limited lookback protection for historic liabilities. In addition, unlike the voluntary disclosure program, a taxpayer may not apply anonymously for admission to the amnesty program.

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Lookback protection and anonymity may be significant factors for out-of-state businesses that are reviewing their New Jersey tax compliance options in the aftermath of the U.S. Supreme Court's recent landmark decision in [South Dakota v. Wayfair, Inc.](#) It also bears noting that the amnesty does not cover the post-*Wayfair* period or post-New Jersey's enactment of economic nexus.

In light of the foregoing, taxpayers should strategically consider and weigh the benefits and potential adverse consequences of the amnesty program.

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