

PUBLICATION

Spotlight On Texas: Business Tax Amnesty

April 12, 2012

On March 15, 2012, Susan Combs, The Texas Comptroller of Public Accounts (Comptroller), announced a new and exciting development for businesses entitled: "Project Fresh Start - Texas Taxpayer Amnesty Program 2012" (2012 Texas Amnesty Program).

This 2012 Texas Amnesty Program only applies during a limited two-month period, encompassing June 12, 2012 through August 17, 2012, but it will generate a complete (100%) waiver of all outstanding penalties and all outstanding interest attributable to the eligible taxes that are paid during this two-month amnesty period.

Applicable Amnesty Dates

The period covered by the 2012 Texas Amnesty Program is June 12, 2012 through August 17, 2012.

Benefits Of Participating in 2012 Texas Amnesty Program

The 2012 Texas Amnesty Program "wipes the slate clean" by:

- Allowing taxpayers to file past-due reports and returns
- Allowing taxpayers to amend previously-filed erroneous or incomplete reports and returns
- Allowing taxpayers to register for past-due taxes that should have been reported
- Forgiving taxpayers from paying any interest and any penalties attributable to eligible taxes that qualify under the 2012 Texas Amnesty Program.

Eligible Texas State and Local Taxes

Except for those taxes referenced below as being ineligible, any and all Texas state and local taxes that are administered by the Comptroller are eligible for the 2012 Texas Amnesty Program, including, but not limited to, the following:

- Franchise tax
- Sales and Use tax
- City, County and Metropolitan transit authority tax
- City, County and Metropolitan local sales and use tax
- International Fuel Taxes, but only as to the portion due to Texas (not the portion due to any other state, Canada or Mexico)
- Fuels tax
- Interstate Truckers tax
- Hotel Occupancy tax
- Crude Oil tax
- Inheritance tax
- Motor Vehicle tax
- Telecommunications tax
- Natural Gas tax

- Mixed Beverage Gross Receipts tax
- Insurance tax
- Cigarette, Cigar and Tobacco tax
- Other Comptroller-administered taxes.

Ineligible Texas State and Local Taxes

Those taxes not eligible for the 2012 Texas Amnesty Program are as follows:

- Texas Property tax
- Unclaimed Property tax
- Public Utility Commission Gross Receipts Assessments
- Sports and Community Venue tax
- Any otherwise eligible taxes under audit or identified for an audit
- Any otherwise eligible taxes covered under a voluntary disclosure agreement
- Any report or return that was properly filed, but payment was not made with such report or return
- Any otherwise eligible taxes where the tax periods are under audit or investigation.

Eligible Texas Taxpayers

Those businesses eligible to participate in the 2012 Texas Amnesty Program are as follows:

- Texas businesses that did not file required reports or returns, the filing due date of which was before April 1, 2012
- Texas businesses that underreported their Texas state or local taxes or fees for any reason, such as erroneously claiming credits as deductions to which they were not entitled, for required reports or returns, the filing due date of which was before April 1, 2012.

Process to Apply for 2012 Texas Amnesty Program

The following process must be complied with in order to participate in the 2012 Texas Amnesty Program:

- File the original report or return within the applicable two-month period and write "Amnesty" at the top of the report or return
- File the amended report or return within the applicable two-month period and write "Amnesty" at the top of the amended report or return
- Return check or money order with report/return or amended report/amended return in payment of 100% of applicable taxes due within the applicable two-month period and write taxpayer's Federal Employer Identification Number or Social Security Number on the check/money order
- Complete and return the applicable Comptroller's Amnesty Forms with the required reports or returns
- Register for any Texas Business taxes.

Consequences of Not Taking Advantage of 2012 Texas Amnesty Program

Failing to take advantage of the 2012 Texas Amnesty Program can be costly, as follows:

- Comptroller's office will assess hefty penalties against taxpayers who do not utilize amnesty
- Penalties may be as high as 60% of the amount of tax due
- Comptroller's office will accrue interest on the 61st day after such taxes were due at current interest rates of 4.25%; however, the interest rates were 10.50% in 2001 and 9.25% in 2007.

Conclusion

With only a limited two-month time period to act (from June 12, 2012 through August 17, 2012), business taxpayers should now begin the process of evaluating their Texas state and local tax situations to determine whether they should utilize the 2012 Texas Amnesty Program. The last Texas amnesty program occurred in 2007 and generated in excess of \$100 million of unpaid taxes. Therefore, it is reasonable to assume that the next Texas amnesty program will not materialize for at least five years, or until 2017.

The complete waiver of 100% of all penalties and 100% of all interest otherwise due and owing provides a tremendous potential benefit to business taxpayers, which should not be disregarded. For additional information regarding the 2012 Texas Amnesty Program and your potential eligibility, please contact any attorney in the Firm's Tax Department.