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## TIR 10-5: Limited Amnesty Program For Taxpayers With Existing Business Tax Liabilities

### I. Introduction

Section 43 of Chapter 166 of the Acts of 2009 provides that the Commissioner of Revenue shall establish a two-month amnesty program during the fiscal year ending June 30, 2010 (the "Amnesty Program") and determine the scope thereof. Pursuant to the grant of authority in Chapter 166, the Commissioner has established a two-month amnesty period commencing on April 1, 2010 and ending on June 1, 2010 (the "Amnesty Period"), to encourage the payment of delinquent tax obligations to the Commonwealth.<sup>[1]</sup> The Amnesty Program will apply to tax years or periods ending on or before December 31, 2009 and is limited to taxpayers with the following existing business tax liabilities: sales/use tax, sales tax on telecommunications services, meals tax, meals tax local option, materialman sales tax, withholding income, performer withholding, pass-through entity withholding, lottery annuity withholding, room occupancy excise, room occupancy excise local option, convention center financing fees on room occupancy in Boston, Cambridge, Chicopee, Springfield, West Springfield, and Worcester, convention center financing surcharge for sightseeing tours, convention center financing surcharge on vehicle rentals in Boston, convention center financing surcharge on parking in Boston, Springfield, and Worcester, deeds excise, cigarette excise, cigars and smoking tobacco excise, club alcohol beverage excise, gasoline excise, special fuels excise, special fuels excise local option, and boat/recreational vehicles sales tax (collectively, the "Eligible Tax Types"). The Commissioner will notify taxpayers of their eligibility to participate in the Amnesty Program. Only those taxpayers to whom a "Tax Amnesty Notice" has been issued will be eligible.

Under the Amnesty Program, if a taxpayer is notified by the Commissioner that the taxpayer is eligible and the taxpayer pays the full amount of tax and interest due for any period as shown on the "Tax Amnesty Notice," the Commissioner is authorized to waive all unpaid penalties including those imposed for failure to timely file a return;<sup>[2]</sup> failure to file a proper return;<sup>[3]</sup> failure to timely pay a tax liability;<sup>[4]</sup> failure to file, report or pay electronically;<sup>[5]</sup> and failure to pay the proper amount of any estimated tax payment for such period.<sup>[6]</sup>

When an eligible taxpayer pays the full outstanding balance of tax and interest with respect to previously filed returns or assessments, the Commissioner will waive the unpaid penalties (and that interest directly attributable to those penalties) as to that taxpayer for those tax periods. St. 2009, c. 166, § 43.

If an eligible taxpayer fails to pay the full outstanding balance of tax and interest with respect to previously filed returns or assessments due under the Amnesty Program, the Commissioner may impose an additional penalty, not to exceed \$500, to be added to and become part of the outstanding balance due. St. 2009, c. 166, § 43. See section V below.

Penalties that have been assessed or that could be assessed by the Commissioner against a taxpayer for liabilities relating to any other tax types are not eligible for waiver under the Amnesty Program.

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## II. Amnesty Period

The Commissioner has established the Amnesty Period to begin on April 1, 2010 and end on June 1, 2010.

## III. Participation in Amnesty Program

The Commissioner will grant amnesty to taxpayers who have been notified of eligibility and who submit all required payments of tax and interest in full for each tax period as shown on the "Tax Amnesty Notice."

### A. Eligibility Requirements

#### 1. Eligible Taxpayers

The Amnesty Program is open to taxpayers who:

- have been issued a "Tax Amnesty Notice;" and
- have an unpaid and previously self-assessed tax liability for an Eligible Tax Type,
- have been previously assessed a tax liability for an Eligible Tax Type by the Commissioner and are properly disputing the unpaid liability, or
- are delinquent in paying the liability.

#### 2. Who is Not Eligible

Any taxpayer who the Commissioner determines was the subject of a tax-related criminal prosecution or investigation, prior to April 1, 2010, is not eligible for amnesty.

Taxpayers who have signed a settlement agreement with the Commissioner are not eligible for amnesty for the tax periods covered by the settlement agreement including, without limitation, any settlement reached through the Department's Litigation Bureau, Office of Appeals or Offer-in-Settlement Unit.

Taxpayers who have paid all tax and interest due relating to any outstanding assessment but who, at the start of the Amnesty Period, still owe or are properly disputing penalties with regard to that assessment are not eligible for amnesty for the tax period(s) covered by the assessment.

#### 3. Tax Periods

The Amnesty Program applies to liabilities for the Eligible Tax Types for taxable periods ending on or before December 31, 2009.

#### 4. Taxpayers Under Current Payment Agreements

Taxpayers who have entered into a Payment Agreement with the Department prior to the start of the Amnesty Period with respect to Eligible Tax Types and periods are eligible to participate in the Amnesty Program. The Commissioner will waive eligible penalties associated with any period on the "Tax Amnesty Notice" on which tax and interest is paid in full by the June 1, 2010 deadline. The Commissioner will not waive any penalties associated with the tax liability covered by the Payment Agreement that have already been paid with past installment payments made in accordance with the provisions of the Payment Agreement.

## 5. Appeals Pending

Any taxpayer who has an appeal pending with respect to an assessment made by the Commissioner for an applicable tax type and period is eligible for participation in the Amnesty Program if the taxpayer has been issued a "Tax Amnesty Notice" and timely pays all taxes and interest owed in full. Payment of the outstanding liability does not constitute a forfeiture of statutory rights of appeal or an admission of liability for the disputed assessment.

## B. Amnesty Program Payment Requirements

### 1. Payment In Full For Each Tax Period

Eligible taxpayers who make a full payment of all tax and interest due under the Amnesty Program for a particular tax type and tax period will be granted amnesty for unpaid penalties associated with such tax type and period.

Payments made by taxpayers under the Amnesty Program will be accepted online through the Department's Web Services for Income application, Web File for Business application, or in the form of a check or money order made payable to the Commonwealth of Massachusetts. If the taxpayer chooses to make a payment through the Department's website using a credit card, a convenience fee will be charged by the selected credit card vendor.

The taxpayer should include the Bill Number from the "Tax Amnesty Notice" when making payment online or by paper check. Such payment will be deemed to constitute a written waiver of rights under G.L. c. 62C, § 32(e) to the extent such payment relates to the tax and interest in dispute in a pending application for abatement or appeal.

### 2. Due Date

Amnesty payments will be regarded as timely if the required payments, are received by the appropriate office of the Department of Revenue by 5:00 p.m. Eastern Daylight Time, June 1, 2010. In addition, if a payment is delivered by U.S. mail (or a recognized commercial delivery service) to the appropriate office after June 1, 2010, the payment will be considered timely if the date of the U.S. postmark (or other substantiating date mark) is on or before June 1, 2010.

## IV. Scope of Amnesty

If a taxpayer qualifies for amnesty, the Commissioner will waive all unpaid penalties which could be assessed (for the applicable tax types and periods) for the failure of the taxpayer:

1. to timely file any proper return for any tax types and for any tax periods under G.L. c. 62C, § 33;
2. to file proper returns which report the full amount of the taxpayer's liability for any tax types and for any tax periods under G.L. c. 62C, § 28;
3. to timely pay any tax liability under G.L. c. 62C, §§ 33, 35, and/or G.L. c. 62B, § 7;
4. to file, report or pay electronically under G.L. c. 62C, § 33(g); or
5. to pay the proper amount of any estimated tax payment under G.L. c. 62C, § 45A.

For eligible taxpayers, the above unpaid penalties will be waived for taxable periods ending on or before December 31, 2009. Interest (other than interest directly attributable to those penalties) cannot be waived.

## V. Amnesty Penalty

If an eligible taxpayer fails to make a full payment of all tax and interest due under the Amnesty Program for each tax period for which the taxpayer receives a bill, the Commissioner may impose an additional Amnesty Penalty, not to exceed \$500 per taxpayer, to be added to and become part of the outstanding balance due. The additional penalty shall be subject to the provisions of G.L. c. 62C, and may be waived for reasonable cause under G.L. c. 62C, § 33(f). The Commissioner will not impose an Amnesty Penalty on any eligible taxpayer who has an appeal pending with respect to an assessment made by the Commissioner relating to an Eligible Tax Type and period subject to the Amnesty Program and who does not participate in the Amnesty Program. The Commissioner will not impose an Amnesty Penalty on any eligible taxpayer who has entered into a Payment Agreement with the Department and who does not participate in the Amnesty Program, provided the eligible taxpayer remains in compliance with the terms of the payment agreement during the Amnesty Period.

## VI. Administration

All payments submitted to the Commissioner under the Amnesty Program relating to amnesty-eligible tax periods will be considered voluntary. Any overpayments will be applied to other periods with outstanding liabilities, if any, or refunded if no outstanding liabilities exist. Any such payments will be applied to the taxpayer's tax account(s) in accordance with the provisions of 830 CMR 62C.33.1.

Participation in the Amnesty Program and payment of the tax and interest does not constitute a forfeiture of statutory rights of appeal or an admission of liability for the assessment.

## VII. Information

Additional information about this limited Amnesty Program is available on the Department's website at [www.mass.gov/dor](http://www.mass.gov/dor) or by calling (617) 887-6367 or toll free within Massachusetts at 1-800-392-6089.

/s/Navjeet K. Bal  
Navjeet K. Bal  
Commissioner of Revenue

NKB:MTF

March 12, 2010

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[1] If the due date for any tax payment, or abatement or exemption application, falls on a Sunday or legal holiday, it is automatically extended by law to the next business day. G.L. c. 30, § 24. Since May 31, 2010 (the last day of the two month Amnesty Period) is Memorial Day, the due date is extended to the following business day (June 1, 2010).

[2] See G.L. c. 62C, §, 33.

[3] See G.L. c. 62C, § 28.

[4] See G.L. c. 62C, §§ 33, 35; G.L. c. 62B, § 7.

[5] See G.L. c. 62C, § 33(g).

[6] See G.L. c. 62C, § 45A.