



2010 Report on Tax Amnesty Program

**Commonwealth of Massachusetts
Department of Revenue**

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Commissioner of Revenue

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Purpose:

Pursuant to chapter 166 of the Acts of 2009 (the “Act”), the Department of Revenue (DOR) is hereby submitting to the House and Senate Clerks, House and Senate Committees on Ways and Means, the Joint Committee on Revenue and the House and Senate Minority Leaders a report detailing the results of the tax amnesty program. The Act directed the Commissioner of Revenue to maintain records of the amnesty provided, and file a report by September 1, 2010, on the “(i) the number of taxpayers provided with amnesty; (ii) the types of tax liability, for which amnesty was provided and, for each type of liability, the amount of tax liability collected; and the amount of penalties foregone by virtue of the amnesty program; and (iii) the total outstanding tax liability due to the commonwealth, for the period through December 31, 2009, after the collection of all funds under this section.”

Background:

The Act authorized the Commissioner of Revenue to conduct a two-month tax amnesty program by June 30, 2010, to encourage the payment of delinquent tax obligations to the Commonwealth. It also authorized the Commissioner to determine the tax types and tax periods eligible for the tax amnesty program. Pursuant to this grant of authority, DOR established a two-month amnesty period commencing on April 1, 2010 and ending on June 1, 2010. Given the need to implement the tax amnesty program quickly to meet the legislative deadline, DOR designed a targeted, focused tax amnesty program to benefit certain taxpayers who had previously received notice from DOR of an outstanding tax liability.

The scope of the tax amnesty program was limited to eligible taxpayers with outstanding 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, cigar and smoking tobacco excise, club alcohol beverage excise, gasoline excise, special fuels excise, special fuels excise local option, and boat/recreational vehicles sales tax for taxable periods ending on or before December 31, 2009. Under the Act, the Commissioner was authorized to waive unpaid penalties (and interest associated with unpaid penalties) if eligible taxpayers paid in full the underlying tax and interest owed by June 1, 2010. Pursuant to the Act, the Commissioner was authorized to impose an additional penalty of up to \$500 on any eligible taxpayer that failed to pay the full outstanding balance of tax and interest due pursuant to the amnesty program.

To make eligible taxpayers aware of the tax amnesty program, DOR identified all eligible taxpayers with existing accounts receivable and issued a “Tax Amnesty Notice” to delinquent taxpayers, which included total “Amnesty Balance Due” and the “Amnesty Savings” that would be waived for any fully paid period. DOR waived unpaid late filing and/or late payment penalties, penalties for failure to file a proper return, and penalties for underpayment of estimated tax for eligible taxpayers who paid the full amount by June 1, 2010.

The Commissioner did not grant amnesty to any taxpayer who was either 1) the subject of an ongoing tax-related criminal investigation or prosecution, 2) had a signed settlement agreement with the Commissioner, or 3) had paid all tax and interest due related to any outstanding assessment but, at the start of the amnesty period, still owed or was properly disputing penalties from that assessment. The comprehensive program requirements and exceptions are listed in Technical Information Release 10-5 attached hereto.

Overall results:

The Department mailed 35,288 amnesty notices to eligible taxpayers in advance of the amnesty period. The two-month tax amnesty program generated over \$32.6 million in full and partial payments made by 8,495 amnesty eligible taxpayers, which exceeded the Department’s projections of \$20 million in amnesty collections for FY10. A subset of these taxpayers (6,701) made sufficient payments to result in the waiver of \$9 million in penalties associated with their amnesty approved periods. The total outstanding tax liability for amnesty eligible taxpayers not in current payment agreements or disputing their liability (i.e., active receivables) is \$356.2 million. This amount includes \$4 million in penalties assessed for failure to participate and take advantage of the amnesty program.

The following table provides a breakdown of overall collections by tax type during the two-month amnesty period:

Tax Type Breakdown of Amnesty Collections by Status

Tax Type	Amnesty Collections	Penalties Foregone
Sales/Use	\$18,940,238.88	\$4,002,523.40
Meals	\$7,431,401.50	\$2,298,211.81
Withholding	\$4,535,706.15	\$1,928,082.38
Cigars/Tobacco	\$550,530.99	\$222,927.45
Personal Use	\$479,855.51	\$312,779.80
Rooms	\$290,540.57	\$92,814.90
Rooms Local Option	\$141,684.11	\$52,571.09
Meals Local Option	\$68,659.62	\$4,946.44
Club Alcohol	\$52,197.03	\$17,873.63
Sales Service	\$25,374.17	\$23,962.72
Convention Center	\$19,889.96	\$29,402.03
Materialman Sales	\$18,388.74	\$2,055.48

Special Fuels	\$12,918.04	\$3,088.96
Boat/RV	\$1,555.23	\$2,905.00
Performer's Withholding	\$1,086.76	\$72.40
<i>Total Collections</i>	<i>\$32,570,027.26</i>	<i>\$8,994,217.49</i>

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.^[1] 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;^[2] failure to file a proper return;^[3] failure to timely pay a tax liability;^[4] failure to file, report or pay electronically;^[5] and failure to pay the proper amount of any estimated tax payment for such period.^[6]

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.

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 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

TIR 10-5

[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.