

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-96
(02) Income Tax
(04) Corporation Tax
(12) Miscellaneous Tax
(09) Sales Tax
October 18, 1996

Important Notice
New York State
Tax Amnesty

Tax Amnesty is a three-month program that begins on November 1, 1996, and ends on January 31, 1997. Under Tax Amnesty, previous nonfilers and those who underpaid a tax liability have an opportunity to file and pay back taxes and interest in exchange for a waiver of penalty assessments and immunity from future administrative, civil, and criminal action being taken. The program covers certain unpaid tax liabilities for taxable periods ending, and transactions or uses occurring, on or before December 31, 1994.

Who Is Eligible for Tax Amnesty?

- Taxpayers who did not file a required tax return or report;
- Taxpayers who understated the tax liability on a previously filed tax return or report;
- Taxpayers who have an outstanding assessment; and
- Taxpayers who have filed a return, failed to fully pay and have not yet been assessed.

What Taxes Are Eligible for Tax Amnesty?

Amnesty covers the penalties imposed for failure to pay or failure to file under the following taxes:

Taxes Without Special Limitations

- New York State Personal Income Tax - Articles 22 and 16
- New York City Personal Income Tax - Article 30
- New York City Nonresident Earnings Tax - Article 2-E of the General City Law
- Yonkers Personal Income Tax Surcharge - Article 30-A
- Yonkers Nonresident Earnings Tax - Article 30-B

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- Withholding Taxes - New York State, New York City and Yonkers (Exception: The penalty imposed under section 685(g) (officer, partner, etc. liability for withholding tax) is not eligible for amnesty)
- Sales and Use Taxes - Articles 28 and 29 (includes local taxes; also includes section 1104 Special Hotel Occupancy Tax and section 1104-a Hudson Valley Greenway Fee)
- Special Tax on Passenger Car Rentals - Article 28-A.
- Motor Fuel Tax - Article 12-A, including local taxes (Exception: The penalty imposed under section 289-b.2 (officer, shareholder, employee, etc. liability for unpaid motor fuel and diesel motor fuel taxes) is not eligible for amnesty)
- Beverage Container Tax - Article 18-A
- Highway Use Tax - Article 21
- Estate Tax - Article 26
- Gift Tax - Article 26-A

Taxes With Special Limitations

- Oil Company Taxes - only sections 182, 182-a and 182-b of Article 9
- Transportation and Transmission Company Taxes - only sections 183, 184 and 184-a of Article 9
- Business Corporation Taxes - Article 9-A
- Petroleum Business Taxes - Article 13-A (Exception: The penalty imposed under section 315(a) (officer, shareholder, employee, etc. liability for unpaid petroleum business taxes) is not eligible for amnesty)
- Unincorporated Business Tax - Articles 16-A and 23

Amnesty relating to taxes imposed by Article 9, 9-A, 13-A, 16-A or 23 is limited to taxpayers who employ 500 or fewer employees in the United States on the filing date of the amnesty application. Utilities that are subject to the supervision of the State Department of Public Service are also not eligible for amnesty for these taxes. Amnesty relating to taxes imposed by

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Article 9 is further limited by excluding taxpayers (a corporation, joint-stock company or association) formed for or principally engaged in the conduct of aviation. However, a taxpayer formed for or principally engaged in the conduct of aviation may be eligible for amnesty with respect to taxes imposed under Article 9-A. Also, taxpayers who are ineligible for amnesty due to the limitations specified in this paragraph may be eligible for amnesty for other taxes, such as withholding and sales taxes.

What Penalties Are Not Eligible For Tax Amnesty?

- Any penalty paid prior to application for tax amnesty; and
- Penalties imposed on responsible persons, officers, etc. under sections 289-b.2, 315(a) and 685(g) of the Tax Law.

General Qualifying Requirements

The following general requirements must be met in order to qualify for amnesty:

- The completed application for amnesty (generally on Form AM-2) must be filed on or before January 31, 1997;
- Appropriate tax returns must be completed and submitted with the application; and
- Taxes and related interest must be paid for the period for which amnesty is sought. Failure to pay the taxes plus interest in full will result in amnesty being denied. (However, see *Installment Plans* on page 5).

Amnesty applies to all taxable periods ending or transactions or uses occurring on or before December 31, 1994. Amnesty can be granted only for those taxes and taxable periods specified by the taxpayer on the amnesty application, and only if all tax and interest is paid. Any tax application, return or report filed under Tax Amnesty is subject to the usual verification and review as provided by statute. Any penalty paid before a taxpayer

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applies for amnesty is not refundable. Any tax or interest paid under the Amnesty Program is also not refundable unless the Commissioner on the Commissioner's own motion redetermines the amount of the tax due.

Any information received under the Amnesty Program that falls within the parameters of the exchange agreement between the New York State Department of Taxation and Finance and the Internal Revenue Service may be disclosed to the Internal Revenue Service.

Eligibility Restrictions

- Tax liabilities related to taxable periods ending or transactions or uses occurring after December 31, 1994 are not eligible for amnesty.
- Amnesty will not be granted to any applicant who received any benefit under either the 1985/1986 or the 1994 Amnesty Program for the tax type or types being applied for under the current program. For example, a taxpayer who received amnesty for Withholding Tax under the 1985 Amnesty Program is not eligible for amnesty for Withholding Tax under the current Amnesty Program. The taxpayer would, however, be eligible for amnesty for other tax types such as income tax, sales tax, use tax, etc.
- Amnesty will not be granted to any applicant who is a party to any criminal investigation being conducted by an agency of New York State or any of its political subdivisions relating to any action or failure to act which is the basis for the penalty for which amnesty is sought.
- Amnesty will not be granted to any applicant who is a party to any civil or criminal litigation pending in any court on the date of the amnesty application, relating to any action or failure to act which is the basis for the penalty for which amnesty is sought. Civil litigation with respect to an amnesty application for any eligible tax liability will not be considered pending on the date of the amnesty application if the

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taxpayer has withdrawn from the litigation before amnesty is granted.

- The granting of amnesty will be conditioned upon the applicant's withdrawal from any proceedings in the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals involving the matter for which amnesty is sought.

If an application is denied due to an ongoing criminal investigation or pending criminal prosecution, the taxpayer may resubmit the application if the investigation or prosecution does not result in a conviction. This resubmission must be within 30 days of official notice that the investigation has ended or the conclusion of the prosecution. If the taxpayer is not officially notified of the termination of a criminal investigation, the resubmission must be made within 5 years and 30 days after the denial of amnesty.

A taxpayer convicted of a crime relating to a tax that is the basis of the penalty for which Tax Amnesty is sought is not eligible for amnesty for any period or assessment for that tax.

Installment Plans

Installment payment plans are available to Amnesty Program applicants claiming severe financial hardship. If an applicant certifies on the amnesty application that payment in full with the application presents a severe financial hardship, the applicant may pay the amount due in installments without losing eligibility for amnesty. The applicant is required to pay 50% of the amount the applicant calculates as due with the application. The balance due, including interest, is required to be paid in no more than two installments on or before March 15, 1997, unless a later date is specified on an amnesty bill issued by the Commissioner in response to the applicant's request for amnesty.

An applicant may file an application for amnesty for a tax liability for which a current deferred payment agreement exists. In order to receive amnesty, the taxpayer must pay all tax and

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interest due by January 31, 1997 unless a later date is specified on an amnesty bill issued by the Commissioner of Taxation and Finance in response to the applicant's request for amnesty. If the taxpayer pays only part of the tax liability covered by the deferred payment agreement by January 31, 1997, or the date specified on an amnesty bill, amnesty will be granted with respect to the portion of the liability paid.

Additional Penalty

Certain taxpayers who are eligible for amnesty, but choose not to participate, are subject to an additional penalty. The additional penalty is equal to 5% of the total penalty assessed against the taxpayer that would have been eligible for waiver under the Amnesty Program. The additional penalty applies to penalties that have been already assessed or may be assessed in the future. However, taxpayers who enter or have entered into a deferred payment agreement by January 31, 1997, for tax, interest or penalty due will not be subject to the additional penalty.

Also, taxpayers engaged in civil litigation in the courts, and taxpayers who have matters pending in the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals, will not be subject to the additional 5% penalty for the liability being protested.

Forms and Instructions

HOW TO OBTAIN TAX AMNESTY APPLICATIONS, RETURNS AND ADDITIONAL INFORMATION

Telephone numbers

- * General information, applications and tax forms; toll free weekdays 8:30 a.m. - 8:00 p.m.
1-888 552FILE
(1-888 552-3453)

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- * Applications and tax forms; toll free weekdays 8:30 a.m. - 4:25 p.m.
1-800 462-8100
- * Assessment, billing and collection questions, toll free weekdays 8:30 a.m. - 8:00 p.m.
1-888 2PAYNYS
(1-888 272-9697)
- * From areas outside the U.S. and Canada toll call weekdays 8:30 a.m. - 8:00 p.m.
(518) 485-6800

Fax-on-Demand Forms Ordering System

- * **Tax Amnesty Forms Index Code: 50000. Toll free**
everyday 24 hours
1-800 748-3676

Internet Web Site

- * New York State Home Page: <http://www.state.ny.us>

Addressees to submit written requests

- * For applications and tax returns:

NYS Department of Taxation and Finance
Taxpayer Assistance Bureau
W.A. Harriman Campus
Albany, New York 12227