

New Law Provides Brief Window of Amnesty from Michigan Tax Penalties

A new law provides a brief window for amnesty on existing Michigan tax penalties and adds a new penalty provision.

Under present law, taxpayers who fail to timely file a Michigan tax return or timely pay a Michigan tax incur a penalty of 5 percent per month on the tax properly reportable on the tax return, up to a maximum of 50 percent.¹ Interest also accrues on Michigan taxes that are not paid when due.²

Michigan law has also long provided for waiver of penalties for failure to timely file a tax return, or timely pay tax, due to reasonable cause and not willful neglect.³ This is a subjective standard, although administrative rules provide illustrative examples to guide the Michigan Department of Treasury's "department" discretion.⁴ A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order (provided the uncontested portion has been paid) to the Michigan Tax Tribunal within 35 days, or to the court of claims within 90 days, after the assessment, decision or order. A refund action may be commenced in the court of claims within six months after payment of the tax or adverse determination of the taxpayer's claim for refund, whichever is

later, if the claim concerns the Michigan Single Business Tax Act.⁵

The department may compromise interest, though there is no standard in the law for exercise of this authority, and in practice the department rarely exercises it. The department is forbidden from compromising any tax.⁶

The department is sometimes reluctant to waive penalties. Under a statute signed into law on November 26, 2001, the commissioner of revenue *must* waive penalties in certain circumstances. The new law provides that when the taxpayer pays in full all tax and interest due, files any delinquent tax return, and makes a written request for waiver,

3855 as soon as possible before June 30, 2002. Applications for amnesty are made on Form 3855, Amnesty. This form can be downloaded from the department's website, www.treasury.state.mi.us. It can also be obtained by calling the department's amnesty office at 1-866-410-0002.

If the taxpayer has not paid in full all tax and interest due by the submission of the written application for amnesty, the taxpayer must pay at least the greater of \$10,000 (\$100,000 for a taxpayer who is not an individual) or 50 percent of the tax and interest owing when making the application, and pay the balance in two equal installments due on August 15, 2002 and September 15, 2002.⁹

This program is not available to taxpayers who are the subject of an ongoing audit or investigation.

the commissioner of revenue *shall* waive the penalty within an amnesty period of 30 to 60 days designated by the state treasurer ending before September 30, 2002.⁷

The state treasurer has designated that the amnesty period begin on May 15, 2002 and end on July 1, 2002.⁸ Requests for amnesty may be filed before May 15 but not after July 1, 2002. Qualifying taxpayers should file their amnesty applications as soon as possible.

On November 30, 2001, the state treasurer issued an announcement, which can be found at www.michigan.gov/treasury, declaring that the amnesty period would end on June 30, 2002. Although this ambiguity would surely be construed against its drafter, taxpayers would do well to file their Forms

The new law does *not* apply to:

1. Taxes due after June 1, 2001.¹⁰
2. Taxpayers eligible to enter into a qualifying voluntary disclosure agreement.¹¹
3. Tax attributable to income derived from a criminal act if the taxpayer is under criminal investigation or involved in a civil action or criminal prosecution for that tax, or if the taxpayer has been convicted of a felony under the Michigan Revenue Act or the Internal Revenue Code of 1986.¹²

The new law recodifies prior law that when a taxpayer incurs a criminal or civil penalty as a result of erroneous current written information from the department, the penalty is waived upon the taxpayer's filing

"Tax Notes" is prepared by the Taxation Section of the State Bar. Some items are of primary interest to tax practitioners; others will be useful to lawyers in general practice. Since one purpose of "Tax Notes" is to afford an exchange of tax-related ideas, problems, and experience among Michigan lawyers, readers are invited to submit material for publication. For a copy of the publication guidelines, please contact column editor Steven E. Grob, Dykema Gossett, 35th Floor, 400 Renaissance Center, Detroit, MI 48243.

of the appropriate tax return, payment in full of the tax and interest, and making a written request for waiver to the department.¹³

In addition to all existing penalties, the amnesty legislation introduced a new penalty of 25 percent of the tax due for a taxpayer that fails to file a return and pay a tax due during the amnesty period.

Finally, the new law permanently extends the revenue commissioner's authority to enter into voluntary disclosure agreements for Michigan taxes. Under the voluntary disclosure program, a taxpayer who has not filed tax returns may enter into an agreement with the department to file tax returns and pay tax and interest due for the last four years (the "lookback period"). If the department enters into such an agreement, the department will not assess tax or interest against the taxpayer for years before the lookback period, and will not assess penalties against the taxpayer for any prior period.¹⁴

This program is not available to any taxpayer who is the subject of an ongoing audit, investigation, civil action or criminal prosecution of any Michigan tax, or who has been notified of an impending audit of any Michigan tax.¹⁵ In general, the voluntary disclosure program is more favorable than the new amnesty program if the tax exposure goes back more than four years. ♦

Stephen J. Dunn practices criminal and civil tax litigation. His office is in Troy. His last column appeared in the Michigan Bar Journal in 1997.

FOOTNOTES

1. MCL 205.24(2).
2. MCL 205.23(2).
3. MCL 205.24(4).
4. Mich. Admin. Code R 205.1013.
5. MCL 205.22(1).
6. MCL 205.28(e).
7. MCL 205.31(2), as added by 2001 PA 168.
8. Instructions to Form 3855, Amnesty.
9. MCL 205.31(9), as added by 2001 PA 168.
10. MCL 205.31(5), as added by 2001 PA 168.
11. MCL 205.31(7)(a), as added by 2001 PA 168.
12. MCL 205.31(7)(b), as added by 2001 PA 168.
13. MCL 205.31(1), as recodified by 2001 PA 168.
14. MCL 205.30c(4), as added by 2001 PA 168.
15. MCL 205.30c(3)(a), (b), (c), (d), as added by 2001 PA 168.