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TAX TIPS FOR ATTORNEYS: CALIFORNIA OFFERS AMNESTY FOR INCOME AND SALES TAXES

by Dennis M. Sandoval, J.D., LL.M. (Tax), CELA

The California Legislature has approved a tax amnesty program, which will begin February 1, 2005 and run through March 31, 2005. An applicant for amnesty can be relieved of all civil and criminal penalties for income, franchise, sales and use taxes for periods prior to January 1, 2003. The amnesty program does not apply to payroll or employment taxes, property taxes and other miscellaneous taxes.

Amnesty is available to individuals, businesses, fiduciaries, estates and trusts that either: (1) did not file pre-2003 California tax returns; (2) underreported taxes for one or more periods prior to 2003; or (3) did not pay pre-2003 income, franchise, sales or use taxes on time. Taxpayers that are not eligible for amnesty include: (1) those involved in a criminal court proceeding; (2) those under criminal investigation or prosecution for tax-related matters; and (3) those involved in certain abusive tax shelter transactions. Taxpayers that are in active bankruptcy need approval from the bankruptcy court to participate in the amnesty program.

To participate in the Franchise Tax Board ("FTB") and Board of Equalization ("BOE") programs, a taxpayer must complete and return a signed amnesty application before April 1, 2005. Amnesty applicants must also file any required tax returns, including amended returns, and pay any taxes or interest on or before May 31, 2005. In the alternative, applicants can enter into an amnesty installment agreement which would require the entire liability to be paid by June 30, 2006.

Tax amnesty will provide relief from penalties and fees, but the FTB and the BOE are prohibited from refunding or crediting any penalties and fees the taxpayer paid before applying for amnesty. Accordingly, a taxpayer that has an existing balance due that includes penalties and/or fees should apply any payments made prior to applying for amnesty to taxes and interest only.

A taxpayer under audit, or with an existing protest, appeal, amended return, etc., that has penalties associated with it may want to apply for amnesty to get penalty and fee relief.

New Penalties to be Applied. Beginning April 1, 2005, the FTB and BOE can impose substantial new penalties on taxpayers who were qualified to apply for amnesty and chose not to participate. The agencies will impose these penalties on all amnesty-eligible years and reporting periods, including those closed by the statute

of limitations. The new penalties include: (1) a 40% (instead of 20%) accuracy-related penalty; (2) for amounts that are "due and payable" on March 31, 2005, a penalty of 50% of interest due; and (3) for amounts that "become due and payable" after March 31, 2005, a penalty equal to 50% of the interest computed from the original due date of the return up to March 31, 2005. The BOE will also impose double the amount of existing penalties when issuing a deficiency determination for tax due from periods before 2003.

Many taxpayers don't realize they owe money to California on old returns or returns they may have forgotten to file. The state has records going back many years. The author personally knows of a case in which the FTB is investigated unpaid taxes going back to 1977. While you and your clients may believe you have always filed your tax returns, the author suggests that it may be wise to check with the FTB (for income and franchise taxes) and the BOE (for sales and use taxes) to see if these agencies believe you or your clients have unpaid taxes or if they are missing a tax return. If these agencies show that you or your clients owe money or have unfiled tax returns, advice on amnesty should be sought from a tax professional.

If you or your clients are undergoing a federal or state audit, there are extremely important decisions that must be made right now. Contact a tax professional to discuss your options.

Dennis M. Sandoval is one of only two Certified Taxation Law Specialists practicing in Riverside County. He is the only attorney who is certified as a Certified Taxation Law Specialist and a Certified Estate Planning, Trust & Probate Law Specialist by the California Bar Board of Legal Specialization and as a Certified Elder Law Attorney by the National Elder Law Foundation. His tax controversy, estate planning and elder law practice is located in Riverside. He can be reached at (951) 787-7711.

