



Texas – New Tax Amnesty Program Begins

By Steve Phillips

The Short Story

The Texas tax governing authority has recently opened the door to allow businesses non-compliant with Texas tax obligations an opportunity to right their ship, and to do so in an extremely favorable manner, without interest or penalties. This amnesty program only applies for periods prior to April 1, 2012, and is further only open from June 12 through August 17, 2012. So time is of the essence.

Background

While the great state of Texas enjoys a reputation as being a “no income tax state” or at least a low-tax state in which to do business, that does not mean it is a no tax jurisdiction. A plethora of taxes apply to businesses in Texas, such as sales and use taxes, franchise taxes, and ad valorem personal and real property taxes. (The franchise tax, which applies to most type of business entities, certainly smacks of an income tax but that is for another article.) Nonetheless, Texas garners nationwide and worldwide attraction as a favorable place for non-Texans to expand and conduct business due to its perceived low-tax and other business friendly environs.

Often, however, as those migrating businesses tread into Texas, whether from across national or international borders, proper application, reporting, and payment of Texas taxes are not always of the highest priority. They are not the first thing on the expanding entrepreneur's mind, nor that of her advisers, if she even thinks to consult them. Whether due to neglect or ignorance, noncompliance with Texas tax obligations is a common occurrence. When these taxes do come to mind, there is typically some period of cumulative noncompliance that must be dealt with before the errant taxpayer comes in from the cold.

As a matter of informal policy, the Texas Comptroller of Public Accounts (the Texas tax administrator) can be approached at any time with voluntary disclosure appellations, from

those seeking to “get right” with the Comptroller and move forward in a compliant vein. In advising and counseling those parties, there are always the questions of how many periods of past taxes must be paid, and then, what the cost will be in penalties and interest. As a matter of principle and statute, the waiver of interest is almost never obtained in Texas, with penalties sometimes waived depending on whether prescribed but stringent standards are met.

The Fresh Start Amnesty Program

Now, however, the Comptroller has, opened the door in a formal manner to allow those with delinquent Texas tax filing and payment obligations an opportunity to right their ship, and to do so in an extremely favorable manner.

In this regard, the Comptroller has announced a tax amnesty program - the so-called “Fresh Start” program - for taxpayers with past-due Texas reports and delinquent taxes or fees. The amnesty program will be open from June 12 through August 17, 2012. During this time, the Comptroller will waive penalties and interest for businesses that file delinquent tax reports and pay all taxes due, or amend previously filed reports that under-reported taxes and pay the taxes due. A key date relevant to this amnesty program is this: The amnesty applies to tax reports originally due before April 1, 2012. There is apparently no limitation how far back in time the taxpayer can go to remedy unfiled or incorrectly filed tax returns.

The amnesty is available for most state and local taxes and fees administered by the Comptroller's office, which include sales and use taxes, franchise tax, among others (property taxes are not included). The amnesty program is also available to taxpayers who did not have a permit to report and remit Texas taxes. A full list of the taxes that are eligible for the amnesty program can be found here on the Comptroller's website: <http://www.freshstart.texas.gov> and <http://window.state.tx.us/taxes/#TexasTaxes>.

The amnesty program is not available for filing periods under audit or "identified" for an audit. Based on the Comptroller's website, however, if a taxpayer has not actually received a notice from the Comptroller of a tax audit, that likely will be sufficient to qualify for the amnesty program.

A taxpayer who believes that they have unreported or improperly reported Texas taxes should act quickly to identify the affected taxes and periods. Further, in order to come within the no pending audit safe-harbor, a carefully drafted pre-filing disclosure might be useful in order to stave off an audit notice while necessary calculations and returns are being analyzed and prepared. Steps taken to seek relief under the amnesty program should be documented and memorialized to illustrate that efforts to engage in the amnesty program began before an audit notice was received. As always, each individual case should be analyzed by tax counsel to ensure there are no fraud or criminal implications of the non-compliance. The amnesty program would be useful to remedy a case where the taxpayer filed returns taking an aggressive position that was later determined to be incorrect.

A similar amnesty program was deployed in Texas in 2007 resulting in tax collections of approximately \$100,000,000. That program coincided with the end of the last significant business expansion preceding the Great Recession. As the economy in Texas now seems to be expanding in earnest, the Comptroller can certainly hope to recover a significant sum this time around.

The Fresh Start program is a gift of administrative grace that should be considered by any resident or non-resident person doing business in Texas which may have engaged in less-than-stellar tax compliance.

Our Firm

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