

# TAX AMNESTY AND VOLUNTARY DISCLOSURE PROGRAMS: USING STATE PROGRAMS TO ELIMINATE OR REDUCE TAX EXPOSURE

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If you know that you or your business has (or may have) exposure for state and local tax liabilities, including sales tax, use tax, income tax, gross receipts tax (for example, the Ohio Commercial Activity Tax), or franchise tax, you should explore your options to help eliminate or reduce such liability prior to being audited. States and localities offer special programs to help incentivize businesses to report most unreported liabilities. Two common programs offered by states are tax amnesty and voluntary disclosure.

From time-to-time, states may offer tax amnesty programs to incentivize taxpayers to voluntarily report underpayments of tax in exchange for a waiver of penalties, and in many instances, a reduction in the interest due. Tax amnesty programs are generally open to taxpayers that are currently filing in the jurisdiction, as well as, non-filers. In order to qualify and receive the benefits of tax amnesty, an application, tax return and payment are generally due during a predetermined period of time. In some situations, the tax amnesty programs also impose additional penalties on taxpayers under audit that chose not participate in the tax amnesty program.

If your state is not providing an amnesty program, don't worry. Most states, with the exception of Delaware and New Mexico, offer a formal voluntary disclosure program for most business taxes (corporate income, sales and use, gross receipts, etc.) and personal income taxes. The advantages of participating in a voluntary disclosure program are that a taxpayer can limit the look-back period required to file returns, reduce or eliminate penalty and, in some situations, interest. Participation in a voluntary disclosure program is not generally restricted to a limited set period of time like a tax amnesty program. Each state has unique rules regarding its voluntary disclosure program. For example, many states allow current filers to participate in a voluntary disclosure program, while some states require that the entity requesting to participate in the voluntary disclosure program had never filed tax returns in the state. Most states do not allow a business to participate in a voluntary disclosure if it has been contacted by the state for audit. Often times, the voluntary disclosure programs are completed on an anonymous basis to protect the taxpayer's identity and may offer the opportunity to negotiate with a particular jurisdiction.

As of the date of this SALT Buzz, below is a summary of the enacted and proposed tax amnesty programs:

<b>State</b>	<b>Status</b>	<b>Type of Tax</b>	<b>Timeframe</b>	<b>Benefits</b>	<b>Add'l Penalty</b>
Pennsylvania	Enacted	Corporate, Sales/Use, Personal Income, Other	April 21, 2017 through June 19, 2017	Penalties and one-half interest waived	5% non- participation penalty
South Carolina	Enacted	TBD	TBD	TBD	Up to 10% non- participation penalty
Virginia	Proposed	TBD	TBD	Penalties and one-half interest waived	TBD

Look for a future SALT Buzz that discusses the tax amnesty programs in more detail.

### **Amnesty v. Voluntary Disclosure**

If you have a liability in a state that offers an amnesty program and has a voluntary disclosure program, you should understand the requirements and nuances of each program before selecting a program. You should calculate the total cost (tax, penalty

and interest) under each program considering the length of the look-back period, reduction of penalty and reduction of interest to ensure the maximum benefit.

If you would like to discuss upcoming state tax amnesty programs or state voluntary disclosure programs, please contact John Trippier, Tom Fagan or any of the other professionals at Zaino Hall & Farrin LLC.

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