



BDO Seidman, LLP
Accountants and Consultants

February 2005

Subject:

California Franchise and Personal Income Tax Amnesty Program
February 1, 2005 through March 31, 2005

State Tax Alert

The Tax Practice at **BDO Seidman, LLP** is among the largest tax advisory practices in the United States. With more than 30 offices and 250 independent alliance firm locations in the United States, BDO Seidman, LLP has the bench strength and coverage to serve you.

Part of BDO Seidman’s National Tax Office, the State & Local Tax leadership follows:

Glenn McCoy	New York
Jamie Baretela	New York
Dave Barrons	Grand Rapids
Mike Becker	Dallas
Mike Bozimowski	Troy
Jeff Emge	New York
Michael Gamboa	Chicago
Mike Goral	Dallas
Joy Hornkohl	Troy
Emily Irish	Grand Rapids
Shawn Kane	Chicago
Dan Lam	Grand Rapids
Barbara Lambitz	Troy
Jeff Landel	Atlanta
Ambre Lapham	Grand Rapids
Steve Lum	San Jose
Paul Lyons	Troy
John Maurice	Troy
Nick Nesi	New York
Steve Oldroyd	San Jose
Catherine Sabol	New York
Richard Spengler	Grand Rapids
Joe Ward	Dallas
Jon Zefi	New York
Rob Zonenshein	New York

Date/Timing:

California has recently enacted an amnesty program, which will run from February 1, 2005 through March 31, 2005.

Details:

The amnesty program will cover corporation franchise and personal income tax liabilities attributable to tax years beginning before January 1, 2003. **California is also offering a sales and use tax amnesty program, which is the subject of a separate alert.** The program implements considerable new penalties for those taxpayers who do not choose to participate, yet were eligible to do so. (CA Senate Bill 1100, enacted July 31, 2004).

The California tax amnesty program, administered by the California Franchise Tax Board (“FTB”), offers eligible individual or business taxpayers the opportunity to pay their past-due income and franchise taxes and will eliminate most penalties and fees or fear of prosecution. California individual and business taxpayers are eligible for amnesty under the following circumstances:

Taxpayer –

- Did not file the required California tax returns.
- Underreported income on a previously filed tax return.
- Claimed excessive deductions.
- Did not pay previously assessed taxes, interest, penalties, or fees.

Taxpayers who are not eligible for the amnesty program include:

- Taxpayers currently under criminal investigation or prosecution on tax-related matters.

Integrity...Trust...Professionalism...Independence...Service

Details ...(continued)

- Taxpayers currently under criminal investigation or prosecution on tax-related matters.
- Abusive tax shelter transactions that were eligible for relief under California's Voluntary Compliance Initiative or the 2003 IRS Offshore Voluntary Compliance Initiative.
Note: Taxpayers are eligible for amnesty if they participated in non-abusive tax shelters.
- Taxpayers that are currently in bankruptcy may participate, however, will need an order approving the participation from the Federal Bankruptcy Court having jurisdiction over the case.

In order to apply for tax amnesty, a taxpayer must complete and return a signed amnesty application by March 31, 2005. (Since March 31 is a state holiday, CA will accept applications postmarked April 1, 2005). (Income and Franchise Tax Amnesty Application, Form FTB 2300 BE C2). Furthermore, taxpayers must:

- File all missing income or franchise tax returns for amnesty years by May 31, 2005.
- File amended income or franchise tax returns by May 31, 2005, for any years tax was underreported.
- Pay all outstanding tax liabilities and interest by May 31, 2005. Or, set up an installment payment agreement that will fully pay the amnesty years liability by June 30, 2006. If they do not meet the June 30 deadline, FTB will revoke the amnesty and reassess penalties and related interest plus new amnesty penalties based on the balance at the time of default.

Issues to be considered prior to filing for the income tax amnesty program:

- Extensions will not be granted for tax amnesty and must be postmarked by March 31, 2005 (Postmark of April 1, 2005 will be accepted due to state holiday).
- After a taxpayer has completed amnesty and all the related fees and penalties have been waived, a taxpayer may not submit a claim for refund or credit for any amount paid for amnesty. Additionally, a taxpayer may not maintain a protest or appeal of the amnesty amounts, and if the taxpayer has a pending refund litigation case, they must request a dismissal from the court. As a result, taxpayers should consider filing and paying outside the amnesty program to preserve appeal and refund rights.
- Once the choice has been made to file for amnesty and an application has been submitted, it is binding and it cannot be changed.
- To maintain the benefits of amnesty, the taxpayer must remain in compliance by filing and paying taxes in 2005 and 2006.

Taxpayers that were eligible for this tax amnesty program but failed to file under it, will be subject to the following increased penalties for years 2002 and prior:

- 40% accuracy-related penalty on new tax assessments (previously 20%).
- New 50% amnesty penalty will be imposed on existing unpaid interest due for years where amnesty could have been utilized.
- New 50% amnesty penalty is also imposed on accrued interest for tax assessments that become final after the March 31, 2005.

FOR MORE INFORMATION

Please contact:

Jack Frame, New York

(212) 885-8125

jframe@bdo.com

Material Discussed in this newsletter is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.

The information in this newsletter is for general guidance only and is not a substitute for professional advice. The BDO Member Firms accept no responsibility for any actions taken or not taken on the basis of the information in this newsletter.