



**BDO Seidman, LLP**  
Accountants and Consultants

February 2005

**Subject:**

**California Sales and Use 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 Sales and Use Tax (SUT) liabilities attributable to tax years beginning before January 1, 2003. **California is also offering a corporate franchise tax and personal income 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 SUT amnesty program, administered by the California Board of Equalization (the Board), offers eligible taxpayers the opportunity to report SUT that were neither reported nor paid. A taxpayer can avoid substantial penalty charges and possible criminal prosecution if an application is made for amnesty and the taxpayer files the required forms and pays the overdue taxes and interest in full. California taxpayers are eligible to participate in the SUT amnesty for tax reporting periods that started before January 1, 2003 if the taxpayer:

- Under-reported sales or purchases on a previously filed return.
- Did not file a return or report tax for a taxable sale or purchase.
- Has an existing liability.

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

## Details ...(continued)

Taxpayers are not eligible to participate in the SUT amnesty program if they are currently under criminal investigation or if a court proceeding has been initiated as of February 1, 2005.

### In order to apply for the SUT amnesty program taxpayers must:

- Apply by March 31, 2005 (the Board does not mention that March 31, 2005 is a state holiday). (*California Sales and Use Tax Amnesty Program Application*, Form BOE-899).
- File any required tax return(s) by May 31, 2005, and
- Pay all tax and interest amounts in full by May 31, 2005. (If you cannot pay in full by the deadline, you may request an installment plan. If your request is approved, you must pay in full by June 30, 2006.)

Taxpayers currently in bankruptcy must obtain an order from the Federal Bankruptcy Court approving participation in the SUT amnesty program; the order must be submitted with the amnesty application.

If amnesty is requested, all unpaid penalties for tax reporting periods beginning prior to January 1, 2003, will be waived, provided that the tax and the interest for those reporting periods are paid. Beginning April 1, 2005, two types of penalties may be applied to tax liabilities for reporting periods eligible for amnesty, specifically:

If SUT is owed for reporting periods beginning before January 1, 2003 and the taxpayer does not participate in the amnesty program, the Board will assess a penalty equal to 50 percent of the interest on the unpaid tax amount as of March 31, 2005.

For a notice of determination issued by the Board on or after April 1, 2005, any penalties included in that determination will be doubled (except for the penalty described above), and the determination may be issued within ten years from the due date of the tax. The new ten-year statute of limitations will still apply to reporting periods beginning before January 1, 2003, which were still open to issue a notice of determination as of August 16, 2004 (the day the amnesty legislation was enacted). The extended statute of limitations does not reopen reporting periods, which were closed to issue a notice of determination prior to August 16, 2004.

Issues to be considered before filing for the SUT tax amnesty program:

- If a taxpayer owes amounts for several reporting periods, however, only some are eligible for amnesty, the taxpayer should participate in amnesty for those eligible periods.
- **In contrast to the corporate franchise tax amnesty program, taxpayers may request a refund for amounts paid under the SUT amnesty program. File a *Claim for Refund* (Form BOE-101) within six months from the date of the overpayment.** However, if a taxpayer paid the penalty prior to the Board receiving the amnesty application during the amnesty period, no refund or credit will be granted.
- An extension may not be filed; all applications are due March 31, 2005.

## FOR MORE INFORMATION

Please contact:

**Jack Frame, New York**

(212) 885-8125

[jframe@bdo.com](mailto: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.