

Rosen Seymour Shapss Martin & Company LLP

Certified Public Accountants & Profitability Consultants

State and Local Tax

Penalty and Interest Discount Program

Dear Clients and Friends of the Firm:

The New York State ("NYS") Governor recently signed legislation establishing the Penalty and Interest Discount ("PAID") program (hereinafter, "the program"). The program's intent is to encourage eligible taxpayers to pay off their eligible tax liabilities that are at least three years old. A taxpayer who participates in the program will receive a reduction in the accrued interest and penalty currently owed on eligible tax liabilities. The program period will begin on January 15, 2010, and end on March 15, 2010.

Definitions

For purposes of the program, the following definitions apply:

An eligible taxpayer is an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person as described in the tax law that has a tax liability with regard to one or more taxes, fees, or surcharges that meets the conditions to be considered an eligible tax liability. However, a taxpayer who has been convicted of a crime under the tax law or the penal law and who is subject to a court order to pay a tax liability as a result of that conviction is not eligible to participate in the program.

An eligible tax liability is one that is fixed and final, and for which an assessment or final determination was issued on or before December 31, 2006. However, an eligible tax liability does not include an assessment or final determination that includes any of the following penalties:

- any fraud penalty imposed under the tax law;
- a penalty imposed under section 11 of part N of Chapter 61 of the Laws of 2005 (relating to the Voluntary Compliance Initiative);
- a penalty imposed under section 685 of Article 22 (Personal Income Tax Law) or section 1085 of Article 27 (Corporate Tax Procedure) for: fraud;
- the willful failure to collect and pay over withholding tax;
- the substantial understatement of tax;
- a reportable transaction understatement;
- aiding or assisting in the giving of fraudulent returns, reports, statements, or other documents;
- failure to disclose or provide reportable transaction information;
- failure to disclose or provide a reportable transaction return;

- failure to maintain a list of advisees (related to reportable transactions);
- substantial understatement that results in the imposition of the tax preparer penalty under 685(aa) or 1085(s); or
- promoting abusive tax shelters.

Description of the program

At the outset of the program, the NYS Tax Department ("Department") will identify the taxpayers that have assessments and final determinations that are eligible tax liabilities. The Department will compute the total amount of tax, interest, and penalty due under the program for each of the eligible tax liabilities. The amount computed for each liability will reflect the savings an eligible taxpayer is entitled to if the taxpayer pays the reduced amount due for that liability in full during the program period. The savings is due to a partial reduction of the accrued penalties and interest currently owed on the liability (see Computation of the amount due and the savings).

The Department will send written notice in early January 2010 to each eligible taxpayer, at the taxpayer's last known address, inviting the taxpayer to participate in the program. This notification will include a list of the taxpayer's eligible tax liabilities, the reduced amounts due for each eligible tax liability under the program, and the amount of the potential savings for each eligible liability. The notice will also include instructions on how to make a payment under the program.

From the notice provided by the Department, a taxpayer may select one or more of the listed eligible tax liabilities that they intend to pay in full during the program period. At the time the taxpayer selects from the list of eligible liabilities, the taxpayer may choose to make full, partial, or zero payment for one or more of the eligible liabilities. However, if the taxpayer does not make full payment of an eligible liability by March 15, 2010, the taxpayer will not receive any savings on that liability. The program is a one time opportunity to qualify for the savings.

If a taxpayer makes full payment of the reduced amount shown due for an eligible liability during the program period, and, therefore, qualifies for the reduction in penalties and interest, then the taxpayer's liability for that assessment or final determination will be deemed to be satisfied in full.

The Department cannot grant any refund or allow any credit with respect to any tax liability, including any applicable interest or penalty, paid under the program. Also, the Department cannot grant any refund or allow any credit with respect to any penalty or interest paid prior to the time the taxpayer participates in the program.

If an eligible taxpayer has entered into an installment payment agreement with the Department prior to the program's start, and the agreement applies to an eligible tax liability, the taxpayer may participate in the program with respect to that eligible tax liability. However, to qualify for the savings, the taxpayer must make full payment of the reduced amount due for that eligible tax liability no later than March 15, 2010.

Computation of the amount due and the savings

The amount due and the savings under the program for an eligible tax liability are computed as follows:

- If the assessment or final determination was issued on or before December 31, 2003, the amount due will include the underlying tax liability and only 20% of the accrued interest and penalty (including the rate of interest prescribed under section 1145 of the tax law (the sales and use tax interest penalty)). Accordingly, in this case, the savings will be 80% of the accrued interest and penalty.
- If the assessment or final determination was issued after December 31, 2003 and on or before December 31, 2006, the amount due will include the underlying tax liability and only 50% of the accrued interest and penalty (including the rate of interest prescribed under section 1145 of the tax law (the sales and use tax interest penalty)). Accordingly, in this case, the savings will be 50% of the accrued interest and penalty.

If you believe that you have an eligible liability and do not receive a written notice from NYS, please feel free to contact Steven J. Eller at (212) 303-1051 or via email at seller@rsmcpa.com or your RSSM contact person.

Sincerely,
Rosen Seymour Shapss Martin & Company LLP

To ensure compliance with requirements imposed by the IRS, or any state and local taxing authority we wish to inform you that any tax advice contained in this communication (including attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

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