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Virginia's Tax Amnesty Program:

"Get Square" Dance is Almost Over

The General Assembly enacted legislation last March to establish the Virginia Tax Amnesty Program with the stated goals of enhancing voluntary taxpayer compliance and strengthening the collection of outstanding taxes owed to the Commonwealth. The amnesty program was given a moniker, "Get Square VA," and a short life span of 60 days from October 7 through December 5, 2009.

"Get Square VA" offers taxpayers who have unpaid tax liabilities or delinquent tax returns (or both) the limited opportunity to come forward and resolve their tax issues with the Virginia Department of Taxation. Under this Tax Amnesty Program, the Department will waive all civil and criminal penalties and one-half of the interest (whether assessed or assessable) for taxpayers who *remit full payment* of the tax and the remaining one-half of the interest for amnesty-eligible bills during the amnesty period (which expires on December 5, 2009). The amnesty program specifically includes individual and corporate income taxes, fiduciary income taxes, employer income tax withholdings and estate taxes.

In order for individuals or businesses to square up with the Commonwealth, taxpayers must (1) file all outstanding tax returns for all eligible tax periods and (2) remit full payment of all delinquent taxes and 50% of any accrued interest, calculated from the due date of the return, by December 5, 2009. If the payments and returns are received within the amnesty period, the Department will waive the remaining interest owed and all of the penalties associated with the tax liability.

If you can do the Get Square dance, you had better get your name on the dance card: if a taxpayer is eligible for Tax Amnesty Program but does not participate, the Department of Taxation will assess a 20% post-amnesty penalty on the amount of unpaid taxes (but not to outstanding balances of interest or penalties).

Here are some other highlights of the terms and conditions of participation in the Virginia Tax Amnesty Program:

Be Sure the Check is Enclosed. If a taxpayer who is eligible for amnesty files delinquent returns but fails to remit payment, the Department will issue assessments for the taxes due, plus interest and penalties. If the taxpayer then remits payment of the assessments before the expiration of the amnesty period, or within 30 days of the Department's assessment, *whichever*

date is later, the benefits of the amnesty (waiver of all penalties and 50% of the interest) are preserved.

Lump Sum Gets You in the Dance. Taxpayers who are on a time payment plan negotiated prior to the amnesty period are not subject to the amnesty penalty, so long as they remain compliant with the preexisting plan. If a taxpayer is making payments on an amnesty-eligible tax bill under a pre-existing payment plan, payment in full of the balance due during the amnesty period enables the taxpayer to participate in and benefit from the amnesty program.

Skip the Dance with No Penalty. Taxpayers who negotiate time payment plans with the Department of Taxation during the amnesty period will not receive the waiver of all penalties and one-half of the interest unless they then remit full payment of the amnesty amount *during the amnesty period*. The Department will not, however, assess the amnesty penalty for failure to Get Square if the taxpayer remains compliant with the terms of the negotiated payment plan.

Timing is Everything. Amnesty benefits are not available for bills paid before October 7, 2009 or bills assessed after July 9, 2009 with certain exceptions for bills issued during the amnesty period.

Virginia Taxes Only. The amnesty program does not apply to federal tax assessments or local tax assessments.

Business as Usual. The Department of Taxation will continue to pursue normal audit and collection activities against taxpayers throughout the amnesty period.

No Defendants Allowed. Taxpayers with active jeopardy or fraud assessments or who are currently under criminal investigation or facing prosecution for failing to file a return with the intent to evade tax, or for filing a fraudulent return, are not eligible for amnesty.

No Appeals Allowed. Taxpayers who remit payment on a tax assessment under the amnesty program are deemed to have waived the right to challenge that assessment in a current or future administrative appeal (Virginia Code § 58.1-1821) or judicial appeal (Virginia Code § 58.1-1825). Consequently, if a taxpayer is currently challenging an assessment and chooses to Get Square, the appeal will be terminated.

While the financial benefit of the amnesty waivers under the Get Square VA program will be substantial for some, many taxpayers will simply be unable to generate the funds required to participate in the program. Virginians in those circumstances should consider seriously the submission of an Offer in Compromise before the amnesty program expires in December, if only to avoid the assessment of the 20% non-participation penalty. If the Department of Taxation accepts an Offer in Compromise and the taxpayer remits payment of the compromised amount within the prescribed period, the amnesty penalty will not be assessed and the tax liabilities will have been resolved.

CAVEAT: The foregoing information only describes highlights of the more important aspects of the Virginia Tax Amnesty program, and does not constitute legal or tax advice to any person. Anyone receiving or reading this article who believes that the "Get Square VA" Tax Amnesty Program may apply to them should seek

advice immediately from a qualified attorney at law or certified public accountant in Virginia to determine their status, rights and obligations under applicable provisions of the Program.

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