

Reproduced with permission from Tax Management Weekly State Tax Report, 2015 Weekly State Tax Report 23, 3/20/15. Copyright © 2015 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Assessment/Collection

Many States Poised to Consider Tax Amnesty Bills During Their 2015 Legislative Sessions

While Massachusetts has gotten the ball rolling by implementing a tax amnesty program in 2015, many other states have tax amnesty bills that are working their way through the legislative process.

Five other states, Arizona, Indiana, Maryland, Missouri, and South Carolina have tax amnesty legislation pending in their 2015 sessions. New Hampshire has also introduced two bills, but it is uncertain whether they will advance.

The length of each state's program varies, with Missouri offering a generous 90-day period, while Indiana would limit its program to eight weeks.

Many of the state's offering programs are limiting who can participate. For example, Maryland's program will not be available to any taxpayer who participated in prior amnesties programs offered by the state.

States are also imposing penalties for those who do not take advantage of the program and placing restrictions on those who do. For example, Indiana would impose double penalties for taxpayers who do not pay under the program. Participating in Arizona's program requires waiving all administrative and judicial rights of appeal.

Massachusetts. A 60-day limited tax amnesty program enacted in Massachusetts will run March 16 through May 15, according to the Department of Revenue.

In a technical information release, TIR 15-2, issued March 16, the department said the program will apply to certain tax liabilities billed on or before Jan. 1, 2015.

Authority for the 2015 limited amnesty program in Massachusetts was contained in supplemental funding legislation adopted in February.

Language calling for a separate amnesty program for nonfilers to be offered in FY 2016 was also proposed by Gov. Charlie Baker (R) in the budget bill (H.B. 62) he unveiled March 4. That bill is under consideration by the Legislature.

The department said it has sent notices to about 24,000 taxpayers informing them they are qualified to participate in the amnesty program. The notices include individual period balances, the amount of unpaid penalty to be waived if the amnesty balance is paid in full by the due date and the amnesty amount due.

The department said that taxpayers who qualify for the amnesty program have already been billed by the

department for their outstanding tax liability. Under the program, the department will waive all assessed, unpaid penalties for taxpayers who respond by making a full payment on all outstanding taxes and interest for any period listed on the notice by the May 15 deadline.

The program covers a variety of eligible tax types not included in the prior amnesty program, which ended in October 2014, such as corporate excise tax (including financial institutions, insurance, public utilities and banks), estate taxes, fiduciary income taxes and individual use tax on motor vehicles.

Massachusetts Commissioner Amy Pitter said in a March 16 statement that taxpayers with outstanding tax obligations not covered by the amnesty program and who are facing economic hardship should contact the department as soon as possible.

"A payment agreement may be a very good option for taxpayers who are experiencing economic difficulties," she said. "Agreeing to a realistic monthly amount based on the taxpayer's economic circumstances is beneficial to the taxpayer and DOR."

Richard L. Jones, a partner with Sullivan & Worcester in Boston, told Bloomberg BNA March 18 that one important aspect of this latest amnesty program, unlike previous amnesty plans, is that it does not allow participating taxpayers to pursue or continue an appeal of the underlying tax liability.

The last four Massachusetts amnesty programs, which were offered in 2002, 2009, 2010 and 2014, allowed eligible taxpayers to lock in the penalty waiver by making amnesty payment, without waiving appeals rights.

Consequently, Jones said, under the newest amnesty program the taxpayer "must choose whether to go for the automatic waiver of penalties under Amnesty, or to press on with their protest to attempt to get greater relief."

Most cases eventually settle somewhere in the middle after a long administrative appeals process which often takes years, he said. By not allowing amnesty recipients to maintain their arguments that some or all of the tax paid under amnesty was improperly assessed, the state coffers may be deprived of significant dollars for years, Jones said.

Text of Massachusetts TIR 15-2 is at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2015-releases/tir-15-2.html>.

Additional information on the program in Massachusetts is at <http://www.mass.gov/dor/breaking-news/amnesty/tax-amnesty-info.html>.

Maryland. The Maryland House of Delegates gave preliminary approval March 17 to legislation (H.B. 1233) that would offer a two-month tax amnesty window for certain delinquent taxpayers who pay their back taxes plus half of any interest owed.

The amnesty period would apply to taxes that were delinquent as of Dec. 31, 2014, and would run from Sept. 1 through Oct. 30, 2015, the date by which taxes and partial interest would have to be paid.

The measure would give the state comptroller discretion to grant a longer payment period, up until Dec. 31, 2016, for taxpayers who agreed to a payment schedule, although the provision that would cut interest in half would not apply to amounts still owed after Oct. 30, 2015.

A staff “fiscal note” on H.B. 1233 estimated that the state would reap \$11.4 million from the amnesty policy in fiscal year 2016 and \$3.6 million the next year, although the program would cause a loss of just under \$1 million annually in the following fiscal years because some of the taxes paid under the amnesty likely would have been tracked down over time under the comptroller’s other tax compliance and enforcement efforts.

Amnesty would be allowed for the nonpayment, non-reporting, and underreporting of Maryland’s individual and corporate income tax, withholding tax, sales and use tax, and admissions and amusement tax.

The amnesty would not be available to any taxpayer that was granted amnesty under Maryland’s earlier amnesty programs.

Nor would amnesty be allowed for companies that took advantage of the so-called Delaware Holding Company settlement period approved by legislators in 2004 for certain corporations that had used payments to affiliates to shelter income from Maryland taxes.

A similar bill (S.B. 763) is pending in a Maryland Senate committee, although that bill contains additional restrictions on companies that could seek amnesty, resulting in lower revenue estimates of \$3.6 million each in the first two fiscal years, followed by projections of just under \$1 million in revenue losses in future years, for the same reason cited in the fiscal note for H.B. 1233.

In addition to barring those who participated in earlier amnesty periods and in the Delaware Holding company settlement, S.B. 763 would prohibit amnesty for any business that, as of Sept. 1, 2015, had more than 500 employees in the U.S. or was a member of a corporate group that met that criterion.

Both bills would protect amnesty participants from being charged with a criminal tax offense arising out of any return filed or tax paid under the program, unless such criminal charges already were pending in state court or under investigation by the appropriate state officials.

The comptroller, under both bills, would have to report to lawmakers by March 15, 2016, on the revenues raised through the amnesty program.

Text of Maryland H.B. 1233 is available at <http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=hb1233&stab=01&pid=billpage&tab=subject3&ys=2015RS>.

Text of Maryland S.B. 763 is available at <http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=sb0763&stab=01&pid=billpage&tab=subject3&ys=2015RS>.

Arizona. Arizona enacted S.B. 1471, which includes provisions for a tax amnesty program.

The Department of Revenue did not have estimates on the amount of uncollected revenue that the program is expected to recover. But estimates by the Legislature put the figure at \$15 million, department spokesman Sean Laux told Bloomberg BNA March 17.

The amnesty program, or tax-recovery program as it is referred to in the legislation, is the third such measure adopted by the Legislature since 2003, Laux told Bloomberg BNA. He added that it applies to all tax types, except for withholding and luxury tax.

According to an analysis prepared by legislative staff, the provision requires the department to establish a program from Sept. 1 through Oct. 31, for the purpose of reducing or waiving civil penalties and interest for unpaid tax liabilities for any period before Jan. 1, 2014, for annual filers, and Feb. 1, 2015, for all other filers.

It outlines qualifications for acceptance into the recovery program. However, acceptance does not entitle a taxpayer to any refunds or credits.

The provision outlines information that must be contained in the application for the recovery program, and specifies that an application constitutes a waiver of all administrative and judicial rights of appeal.

The provision outlines the department director’s responsibilities with regard to the recovery program. It furthermore requires the department to submit a report to the governor, speaker of the Arizona House and president of the Senate by Jan. 1, 2016, regarding the recovery program, and outlines the information required to be included in the report.

Text of Arizona S.B. 1471 is available at <http://www.azleg.gov/legtext/52leg/1r/laws/0010.pdf>.

South Carolina. South Carolina’s Department of Revenue would have authority to designate a tax amnesty period under a proposed bill pending in the state Senate.

S.B. 526 would enable the department to provide an amnesty period during which delinquent taxpayers could file past-due returns and pay all taxes due without fear of criminal prosecution. The department also would have the option to waive some or all of the interest and penalties related to those past-due taxes.

The department has offered amnesty periods in the past but the most recent was in 2002, according to a written statement that the department provided to Bloomberg BNA on March 17. The department helped to develop S.B. 526, a department spokeswoman said.

“We are committed to the fair administration of South Carolina tax laws, and this legislation offers another tool to support our tax debt collection efforts,” said Rick Reames, department director, in the written statement.

The department would have discretion to set the beginning and ending dates of an amnesty period, but would be required to notify the state legislature 60 days in advance.

As of March 17, the bill was awaiting a hearing in the state’s Senate Finance Committee before it will be eligible for a vote on the full Senate floor. Sen. Hugh Leatherman (R), the state Senate’s president pro tempore and chairman of the Finance Committee, is sponsoring the bill.

Text of South Carolina S.B. 526 is available at http://www.scstatehouse.gov/sess121_2015-2016/bills/526.htm.

Missouri. The Missouri House approved March 5 a bill that would create an amnesty period allowing taxpayers to pay off back taxes owed to the state without being subject to tax penalties or interest due.

The bill, H.B. 384, passed the House by a vote of 141 to 7, and was reported to the Senate the same day. It was referred to the Senate Appropriations Committee March 16.

According to a summary on the House website, H.B. 384 would authorize an amnesty from payment of all penalties, additions to tax, and interest on delinquencies of unpaid taxes administered by the Department of Revenue which occurred on or before Dec. 31, 2014. The amnesty would not extend to taxpayers involved in civil litigation or facing criminal prosecution over their tax obligations to the state.

Taxpayers would be required under the bill to apply for amnesty and pay their taxes in full between July 1, 2015, and Sept. 30, 2015, the summary said. In addition, taxpayers would be required to comply with state tax laws for the following eight years from the date of the agreement, and would become ineligible for any future amnesty for the same type of tax, it said.

According to the summary, supporters of the bill, including a spokesman for the Department of Revenue and a representative of Associated Industries of Missouri, said that the bill would help the state collect up to \$75 million currently owing to the state in back taxes, and would provide relief to taxpayers who have run afoul of the state's tax laws through accidental tax mistakes and violations.

A fiscal note prepared by the Committee on Legislative Research said that the bill would yield \$25 million in back taxes over the \$50 million already identified by department and in the process of being collected.

There was no opposition voiced to H.B. 384 before the Standing Committee on Emerging Issues, which approved the bill by a vote of 11 to 0.

Text of Missouri H.B. 384 is available at <http://www.house.mo.gov/billsummary.aspx?bill=HB384&year=2015&code=R>.

Indiana. The Indiana Department of Revenue would establish an eight-week tax amnesty program for taxes due and payable before Jan. 1, 2013, under legislation (H.B. 1349) passed by the Indiana House and a Senate committee.

The state could collect \$109 million to \$159 million under the program, according to the Indiana Legislative Services Agency.

Under the amnesty provisions in the bill, interest, penalties, collection fees and costs would be waived for taxpayers paying the taxes in full or establishing a payment program, and the Department of Revenue would not seek criminal or civil prosecution or issue an assessment, warrant or demand notice against the taxpayer. If a taxpayer failed to pay, however, the tax liability would be subject to a doubling of penalties.

Text of Indiana H.B. 1349 is available at <https://iga.in.gov/>.

New Hampshire. In New Hampshire, two bills that would establish a tax amnesty period are pending before the state's Senate Ways & Means Committee.

Although both bills have been laid on the table, or set aside for possible future consideration, one of the measures (S.B. 220) has been ruled inexpedient to legislate and is not expected to advance.

The second measure (S.B. 34) would implement a temporary tax amnesty program. It would also establish a voluntary disclosure program for persons or entities to self-disclose a tax liability to the department of revenue administration in order to waive penalties and settle and compromise the tax and interest due.

Legislation must be reported out of New Hampshire's legislative committees by March 26 or will require additional hurdles to be cleared in order to be enacted.

Text of New Hampshire S.B. 220 and S.B. 34 is available at http://www.gencourt.state.nh.us/bill_status/Results.aspx?q=1&txtsessionyear=2015.

Text of New Hampshire SB 34 as amended and laid on the table is available at <http://www.gencourt.state.nh.us/legislation/amendments/2015-0679S.html>.

To contact the reporters on this story: William H. Carlile in Phoenix at wcarlile@bna.com; Kathy Lundy Springuel in Annapolis, Md. at correspondents@bna.com; Martha Kessler in Boston at mkessler@bna.com; Nora Macaluso in Lansing, Mich. at nmacaluso@bna.com; Chris Marr in Atlanta cmarr@bna.com; Christopher Brown in St. Louis at chrisbrown@bna.com

To contact the editor responsible for this story: Steven Roll at sroll@bna.com

□ For additional information regarding tax amnesty programs, see *1720-2nd T.M., State Tax Audit and Collection Procedures: General Principles, at 1720.05.A.1.c.*