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legal alert



Desperate Times Call for Desperate Measures: New Collection Efforts of New York's Department of Taxation May Provide Benefit...or Warning

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With the continued budget crisis and reduction in tax revenues, New York State is getting creative in its collection activities. Beginning January 15, 2010, the New York State Department of Taxation and Finance began the Penalty and Interest Discount (PAID) program. Payments made under PAID can significantly reduce (by up to 80%) the penalties and interest on old tax liabilities. The stated intent of PAID is to encourage eligible taxpayers to pay off stale tax liabilities. In the process, the Tax Department is dusting off its old record books and contacting long-lost delinquent taxpayers to remind them of their long overdue taxes.

The PAID Program

This January, the Tax Department is identifying taxpayers that have assessments and final determinations that are at least three years old. The Tax Department is sending notices that show the total amount of tax, interest, and penalty due and comparing the savings that would be available under PAID. The notice will also instruct the taxpayer on how to make a payment.

If taxes were assessed or a final determination was made prior to January 1, 2004 and the taxpayer is eligible under PAID, then the taxpayer can satisfy the tax liability in full by paying the underlying tax plus only 20% of the penalties and interest that have accrued to date. If taxes were assessed or a final determination was made prior to January 1, 2007, but on or after January 1, 2004, and the taxpayer is eligible under PAID, then the taxpayer can satisfy the tax liability in full by paying the underlying tax plus only 50% of the penalties and interest that have accrued to date.

From the notice provided by the Tax Department, a taxpayer may select one or more of the tax liabilities listed on the notice that they intend to pay in full. 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 upon returning the notice to the Tax Department. However, if the taxpayer does not make full payment of the selected tax liability by March 15, 2010, the taxpayer will not receive any savings on that liability.

A taxpayer is eligible for PAID if such taxpayer is an individual, company, or any other taxpayer that has a tax liability with regard to one or more taxes, fees, or surcharges and the liability is an eligible tax liability. 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, among other things, fraudulent or abusive activities.

If an eligible taxpayer has entered into an installment payment agreement with the Tax Department prior to the program's start, and the agreement applies to an eligible tax liability, then the taxpayer may participate in the program with respect to that eligible tax liability. As with any other eligible tax liability, 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.

Participation

Some of the tax liability the Tax Department is trying to collect is quite stale. Although the tax liability may be ten years old, or even older, the Tax Department may still have avenues for collection outside of the PAID program. However, the Tax Department may have limited or no legal recourse with respect to collecting the tax liabilities listed in the notices sent to the taxpayer. Each taxpayer will have unique circumstances that should be considered before taking advantage of the benefits of PAID or before choosing to not make payments. In determining whether or not to take advantage of PAID, consideration should be given to the age of the liabilities, the Tax Department's previous collection activities and potential collection activities, and the ability to make payment in full by the deadline. If a taxpayer receives a notice with no intention or ability to participate in the benefits of PAID, the notice itself should prepare the taxpayer for the impending collection activities that are likely to begin again after the March 15th deadline.

To discuss the potential benefits or pitfalls of the PAID program with respect to your outstanding tax liability, contact Scott Shimick at (585) 258-2808, or your Underberg & Kessler LLP attorney.