

Tax Amnesty: Striking a Deal with Virginia's Delinquent Taxpayers

by Guy C. Crowgey and Kyle Wingfield

Most Virginians pay their taxes on time. But some individuals and businesses are unable to satisfy their tax obligations on a timely basis. In addition to being liable for the interest that accumulates on their bills, these taxpayers normally face civil and criminal penalties by not paying their taxes.

These are not normal times, however, as Virginia operates with a \$1.35 billion deficit and desperately requires new sources of revenue. To help solve its budget woes, the General Assembly is looking to strike a deal with delinquent taxpayers through a tax amnesty program.

Sponsored by Senator Charles J. Colgan¹ and enacted as Va. Code § 58.1-1840.1 in March of 2009, the Virginia Tax Amnesty Program intends to improve voluntary compliance with tax laws and to increase and accelerate the collection of delinquent taxes owed to the commonwealth.² 2009 amnesty program is expected to produce approximately \$48 million in revenue.³

Tax Amnesty waives, for a limited time, all of the penalties and half the interest due on most taxes owed to the commonwealth. To participate, taxpayers must pay the taxes due and half the interest on outstanding bills and delinquent returns.⁴ Those who do not participate are assessed a 20 percent penalty on the amount of the unpaid tax remaining at the end of the amnesty period.⁵

This is not the first time that the General Assembly has used a tax amnesty program to raise revenues. Similar programs were conducted in 1990 and 2003 with great success. The 1990 program generated approximately \$32 million, and the 2003 program netted \$95 million -- far surpassing the Virginia Department of Taxation's original goal of \$48 million.⁶

It remains to be seen whether a struggling economy will significantly impact the revenue collections for the current program.

All practitioners — not only tax professionals — should be aware of the Tax Amnesty Program when advising their clients.

This article provides an overview of the program and guides taxpayers and practitioners through frequently asked questions about participation in the program.

The Tax Amnesty Framework

What is Virginia tax amnesty?

Tax amnesty waives all penalties and one-half of the interest on outstanding bills and delinquent returns for any tax administered by the Virginia Department of Taxation. To receive these benefits, the taxpayer must pay all of the taxes and the other half of the interest before December 5, 2009.⁷

When does amnesty begin and end?

Amnesty will be available for sixty days, between October 7 and December 5, 2009.⁸

What interest rate applies to previously unfiled returns and underreported income?

An interest rate of 8 percent will be used to determine the interest on previously unfiled returns or underreported income. Interest will be calculated from the due date of the return through October 6, 2009.⁹

What are the consequences to a taxpayer who does not participate in amnesty?

The tax department will impose a 20 percent penalty on the amount of unpaid tax related to any amnesty-eligible bill that remains unpaid at the end of the program. Taxpayers will also remain liable for any outstanding tax, interest, and criminal or civil penalties.¹⁰

Taxpayers are ultimately responsible for determining their eligibility to participate in the amnesty program.¹¹ Ignorance of the liability or amnesty is no excuse. The 20 percent penalty applies to any eligible taxpayer who did not participate.¹²

Administration of Tax Amnesty

Who is responsible for administering the Tax Amnesty Program?

The state tax department will administer the amnesty program.¹³ The commissioner of taxation has issued detailed guidelines and rules for participation in the program.¹⁴

How will taxpayers be notified of their eligibility to participate in amnesty?

The department is sending approximately 550,000 notices to eligible individuals and businesses.¹⁵ During the 2003 amnesty program, the department also placed over 377,000 follow-up phone calls to similar taxpayers.¹⁶ Similar efforts are expected for the current program.

Will normal criminal, civil, and collection actions be suspended during amnesty?

Normal collections will continue during amnesty. Taxpayers who wait for amnesty before paying their bills risk audit, lien, or seizure. However, the department will only pursue criminal proceedings in special circumstances.¹⁷

Eligibility for Tax Amnesty

Which taxpayers are eligible to participate in tax amnesty?

Generally, any individual, corporation, partnership, trust, or estate is eligible to participate in the Amnesty Program. Certain taxpayers, however, are not eligible to participate, including those currently under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax.¹⁸

Which bills and returns are eligible for tax amnesty?

Most bills or delinquent returns administered by the tax department are eligible for amnesty, except the following:

- Bills paid before October 7, 2009;
- Bills with an assessment date after July 9, 2009, with certain exceptions for bills issued during the amnesty period; and
- All obligations of a taxpayer with an active jeopardy or fraud assessment.¹⁹

Getting Tax Amnesty

What steps must a taxpayer take to obtain Tax Amnesty?

Taxpayers must file any amended or missing returns to accurately report their income. Then, the taxpayer must pay the tax and one-half of the interest for any eligible bill before December 5, 2009. No special application forms are necessary to participate.²⁰

What if the taxpayer is unable to pay the full tax and one-half of the interest?

Taxpayers may enter an offer-in-compromise or establish a payment plan if they are unable to pay the tax and half the interest on their bills. Taxpayers doing so will not receive the benefits of amnesty unless the amnesty amount due is paid during the amnesty period, however.

Taxpayers may also consider paying just one of several eligible bills to receive amnesty benefits.²¹

How will payment plans be treated under amnesty?

Taxpayers who are on established payment plans with the tax department or one of its outside collection agencies prior to amnesty will be allowed to continue on those plans. If the bill is amnesty-eligible and full payment is made according to amnesty terms during the amnesty period, that bill will receive amnesty benefits.²²

Taxpayers may enter into payment plans during amnesty but will not receive amnesty benefits unless full payment is made within the amnesty period. If the taxpayer fails to make timely payments, the 20 percent penalty will be imposed.²³

Will taxpayers with pending offers-in-compromise qualify for amnesty?

The offer-in-compromise process will continue during amnesty, and taxpayers will receive amnesty for qualifying assessments if full payment is made during the Amnesty period. Alternatively, the taxpayer may choose to terminate an offer and to participate in amnesty by paying the full tax and half the interest.²⁴

Will a taxpayer who is either protesting an assessment before the tax commissioner or challenging an improper assessment in circuit court be eligible for amnesty?

Taxpayers who have a pending appeal prior to or during amnesty may participate by paying the full amount and one-half of the accrued interest on the assessment. By paying under the

amnesty terms, the taxpayer terminates its current appeal. If the taxpayer chooses to continue with the contested assessment, the 20 percent amnesty penalty may apply.²⁵

Is a refund available for payments made before amnesty began?

No. Only bills paid and refunds filed during the period of October 7 through December 5, 2009, are eligible for amnesty.²⁶

What methods of payment will be available to taxpayers?

The tax department will provide a variety of payment methods during amnesty. Taxpayers may pay with a credit card online or over the telephone for a fee; or they can pay for free online using the Department's QuickPay service. They can also mail a check or money order to the following addresses:

Business Taxes
P.O. Box 26627
Richmond, VA 23261-6627

Individual Taxes
P.O. Box 26685
Richmond, VA 23261-6685

Estate Taxes
P.O. Box 1500
Richmond, VA 23218-1500

Cigarette Taxes
P.O. Box 715
Richmond, VA 23218-0715

Estate taxes and cigarette taxes must be paid by check. All payments must be postmarked no later than December 5, 2009. Checks and money orders must be payable to the Virginia Department of Taxation.²⁷

The 20 Percent Penalty

What penalties will be imposed on eligible taxpayers who do not participate in the program?

A 20 percent penalty will be imposed on any eligible tax liability that remains unpaid at the close of amnesty. The penalty is in addition to all other penalties and interest that may apply to the taxpayer.²⁸

What if a taxpayer later realizes that he or she was eligible for amnesty?

Taxpayers are responsible for determining whether they are eligible to participate in tax amnesty.²⁹ The 20 percent penalty applies to any taxpayer who was eligible but did not participate.³⁰

Publicity

How will the public be informed about tax amnesty?

The tax department will conduct a public awareness campaign for the amnesty program. Efforts will include television and print advertising, an informational website at [GetSquareVA.com](http://www.GetSquareVA.com), and a toll-free number at 1-888-560-0057 to answer taxpayers' questions about the program.³¹

What kind of follow-up will there be?

In addition to receiving a Virginia Tax Amnesty Notice that details their outstanding tax bill and delinquent returns, potential amnesty participants will receive follow-up mailings or phone calls to urge their participation in the program.³²

¹ S.B. 1120.

² VA CODE § 58.1-1840.1(A) (2009).

³ <http://www.GetSquareVA.com> (last visited Sept. 29, 2009)

⁴ VA CODE § 58.1-1840.1(D)(2).

⁵ VA CODE § 58.1-1840.1(F)(1).

⁶ Press Release, Va. Dept. of Taxation, VIRGINIA TAX AMNESTY CLOSING IN A FLURRY (Nov. 7, 2003).

⁷ VA CODE § 58.1-1840.1(D)(2) (2009); Virginia Tax Amnesty Guidelines 2009, PD 09-140, II.

⁸ VA CODE § 58.1-1840.1(D)(1); Virginia Tax Amnesty Guidelines 2009, PD 09-140, I.

⁹ VA CODE § 58.1-1840.1(E); Virginia Tax Amnesty Guidelines 2009, PD 09-140, IV.

¹⁰ VA CODE § 58.1-1840.1(F)(1).

¹¹ P.D. 05-156; P.D. 06-128; P.D. 08-164.

¹² VA CODE § 58.1-1840.1(F)(1).

¹³ VA CODE § 58.1-1840.1(B).

¹⁴ Virginia Tax Amnesty Guidelines 2009, PD 09-140.

¹⁵ Virginia's Tax Amnesty Will Start on Oct. 7, RICHMOND-TIMES DISPATCH, Sept. 30, 2009.

¹⁶ Press Release, Va. Dept. of Taxation, VIRGINIA TAX AMNESTY CLOSING IN A FLURRY (Nov. 7, 2003). This article does not say anything about 377,000 phone calls.

¹⁷ Virginia Tax Amnesty Guidelines 2009, PD 09-140, IV.

¹⁸ VA CODE § 58.1-1840.1(D)(2)(a); Virginia Tax Amnesty Guidelines 2009, PD 09-140, V.

¹⁹ Virginia Tax Amnesty Guidelines 2009, PD 09-140, III.

²⁰ Virginia Tax Amnesty Guidelines 2009, PD 09-140, IV.

²¹ <http://www.GetSquareVA.com>

²² Virginia Tax Amnesty Guidelines 2009, PD 09-140, V.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ <http://www.GetSquareVA.com>.

²⁷ Virginia Tax Amnesty Guidelines 2009, PD 09-140, VII

²⁸ VA CODE § 58.1-1840.1(F)(1).

²⁹ P.D. 05-156; P.D. 06-128; P.D. 08-164.

³⁰ P.D. 05-156; P.D. 06-128; P.D. 08-164 VA CODE § 58.1-1840.1(F)(1).

³¹ Virginia Tax Amnesty Guidelines 2009, PD 09-140, VII; <http://www.GetSquareVA.com>.

³² <http://www.GetSquareVA.com>.

Guy C. Crowgey is a principal of the law firm of Crowgey & Grossman, where he specializes in tax controversy work at the federal and state levels. Crowgey is also a member of the Virginia State Bar Council and a member of the board of governors of the VSB Taxation Section. He is a graduate of the University of Richmond School of Law and received his master of laws degree with a focus in taxation from the College of William and Mary.

Kyle H. Wingfield is an associate with the law firm of Crowgey & Grossman. He is a 2008 graduate of the University of Richmond School of Law and received a master of laws degree with a focus in taxation in 2009 from Georgetown University.