

WITHUMSMITH+BROWN TAX SERVICES TEAM'S NEWSLETTER

# STATE AND LOCAL TAX

BE IN A POSITION OF STRENGTH<sup>SM</sup>

## NEW YORK STATE PENALTY AND INTEREST DISCOUNT PROGRAM

STAY AFLOAT BY AVOIDING PENALTIES  
AND TAKING ADVANTAGE OF TAX AMNESTY

PLUS:

- + New Jersey Tax Treatment of a Complete Liquidation of a Federal S Corporation
- + Washington DC's Second Emergency Budget Act
- + Pennsylvania Tax Amnesty Program

# NEW YORK STATE PENALTY AND INTEREST DISCOUNT PROGRAM

Recently New York State authorized a limited tax amnesty program known as the Penalty and Interest Discount program (“PAID”). The PAID program offers taxpayers an opportunity to take advantage of significant reductions in penalty and interest amounts that have been assessed on existing final tax determinations.

Qualified taxpayers that participate in the PAID program can reduce the penalty and interest on unpaid tax bills by:

- + 80% for tax bills issued prior to December 31, 2003, and,
- + 50% for tax bills issued after December 31, 2003 but before December 31, 2006.

Eligible taxpayers include individuals, partnerships, estates, trusts, and corporations who have received a final tax determination that was issued prior to December 31, 2006. Any final determinations that are less than three years old are not eligible for the PAID program.

The PAID program will be available beginning on January 15, 2010, and continuing through March 15, 2010. All eligible taxpayers must make full payment of any tax, interest, and penalty before the expiration date of the program in order to take advantage of the PAID benefits.

## New Jersey Tax Treatment of a Complete Liquidation of a Federal S Corporation

When determining New Jersey gross income tax, total gross income before exemptions and deductions is made up of 16 specific categories of income. A loss incurred in one category of income can be used to offset a gain within the same category of income, but such a loss cannot offset a gain in a different category of income. Two of the categories of income used in determining New Jersey gross income are net gains from the disposition of property, and, S corporation shareholder income.

In prior years, any gain or loss incurred on the sale of assets in the complete liquidation of a S corporation were reported as S corporation shareholder income. For New Jersey gross income tax purposes, this treatment created a situation where an S corporation shareholder could be taxed on phantom income because the S corporation shareholder was prevented from using gains or losses from the sale of S corporation assets to offset income or loss used in determining net gains from the disposition of property.

The purpose of the New Jersey gross income tax is to tax true economic gain and not phantom income. As a result, New Jersey recently adopted regulations that, upon the complete liquidation of an S corporation, allow an S corporation shareholder to separately report gains from the sale of S corporation assets as net gains from the disposition of property and not as S corporation shareholder income. This treatment provides an S corporation shareholder with the opportunity to offset any gain or loss on the sale of the S corporation's assets with any gain or loss from the sale of other real and tangible or intangible property that would otherwise be reported as net gains from the disposition of property.

Any income or loss from the normal business operations of the S corporation from the beginning of the tax period through the date before the complete liquidation will be reported as S corporation shareholder income. A complete liquidation is deemed to occur in the tax year when all of the S corporation's assets and stock have been sold or disposed of.

The complete liquidation of a federal S corporation can be a complicated process with many federal and state tax consequences. However, with proper tax planning, in the event of a complete liquidation of a federal S corporation an S corporation shareholder can realize significant New Jersey individual income tax savings by offsetting net gains from the disposition of property with net losses from the sale of S corporation assets that would otherwise be treated as S corporation shareholder income.

The New York Department of Taxation and Finance (“Department”) will begin contacting eligible taxpayers by mail beginning in January 2010 to inform them that they may be eligible to participate in the PAID program. Taxpayers can also use the Department’s website at [www.nystax.gov](http://www.nystax.gov), to see if they may have tax bills from prior years that may be eligible for the program.

Taxpayers excluded from the PAID program are those who were convicted of a crime and required to pay a tax liability as a result of this conviction. Also, any fraud penalties are excluded from the PAID program.

The Department has increased their efforts to collect all outstanding tax liabilities therefore eligible taxpayers should take advantage of the PAID program if at all possible. If not, the savings opportunity provided by PAID will be lost and any unpaid tax debts will continue to accrue penalty and interest at the full statutory rate.

If you have any questions concerning the New York State PAID please contact the WS+B State and Local Tax group.



## Washington DC’s Second Emergency Budget Act

Within the District of Columbia’s new Fiscal Year 2010 Budget Support Second Emergency Act of 2009, there is a provision available for a tax amnesty program. The Chief Financial Officer of D.C. is authorized to establish the program. The Chief Financial Officer will also determine which years’ returns will apply, which tax types will apply, and any procedures necessary to determine the truthfulness and accuracy of the returns being filed under the amnesty program.

If the Chief Financial Officer decides to establish the program for a period ending after December 31, 2008, the program will apply to tax returns or reports for the tax year ending prior to December 31, 2009.

The program will assist taxpayers by relieving eligible taxpayers from any collection fees, any fines or other civil or criminal penalties for failure to file a return, or taxes due on a return or report that was required to be filed under the applicable tax periods.

## Pennsylvania Tax Amnesty Program

A tax amnesty program has been established for Pennsylvania from April 26, 2010 to June 18, 2010. Half of all interest and all penalties will be waived on eligible taxes paid under the amnesty program. “Eligible taxes” are those delinquent as of June 30, 2009, and applies to unknown liabilities for five years prior to June 30, 2009. If taxpayers are eligible for the amnesty and can certify that payment under the program would cause financial hardship, they may be able to pay the taxes and interest in installments.

**Please contact our Tax Services group members for more resources to support you or your business:**

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