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Straight And Narrow Amnesty Programs In Michigan And Illinois

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Michigan and Illinois both enacted recent amnesty programs with limited application. Illinois' amnesty program is for franchise tax or license fees due to the Illinois Secretary of State. Michigan's amnesty program is narrower still and relates only to use tax on certain services that was in effect for 17 hours on December 1, 2007. While both amnesty programs have a somewhat narrow appeal, the programs do allow some taxpayers to straighten their compliance.

Illinois Amnesty

The Illinois Franchise Tax and License Fee Amnesty Act of 2007, which runs from February 1, 2008, through March 15, 2008, covers underreported franchise taxes (for Illinois corporations) and license fees (for foreign corporations) collected by the Illinois Secretary of State.¹ Interest and penalties are waived for franchise taxes and license fees paid during the amnesty period, if the taxes and fees are *accepted* by the Secretary of State. For franchise taxes or license fees not paid (and accepted) during the amnesty period, the interest rate will double to 2% per month. Taxpayers are ineligible to participate in the program if they are subject to a criminal investigation or are party to civil or criminal litigation involving nonpayment, delinquency, or fraud with respect to any franchise tax or license fee.

Statute of Limitations. With respect to most underreported taxes, the general seven-year statute of limitation applies. For taxpayers participating in the amnesty, however, the statute of limitations is reduced to four years in one limited instance.² Where a corporation has an unreported increase in paid-in capital that occurred prior to the most recent seven-year period, under the amnesty the corporation is required to pay only the

¹ See 805 ILCS 8/5-10 (Public Act 95-233, effective Aug. 16, 2007).

² See 805 ILCS 5/15.90(a) (Public Act 95-233, effective Aug. 16, 2007).

increased tax resulting from the previously unreported increase in paid-in capital for the most recent four-year period.

Procedural Compliance. The Illinois Secretary of State is notoriously driven by form-over-substance. The Secretary of State rejects filings for lack of procedural compliance. Taxpayers wishing to participate in the amnesty program should carefully follow the instructions in filing an amnesty petition and remitting payment. If a taxpayer makes a timely payment, but the filing is not accepted by the Secretary of State before the amnesty period expires, the tax would be subject to double interest. Filing early in the amnesty period is well advised as it gives time to sort through any filing issues that may arise before the amnesty period runs.

Michigan Amnesty

Before its repeal, HB 5198 imposed use tax on certain services, effective December 1, 2007. The use tax was retroactively repealed under HB 5408, a mere 17 hours after the tax took effect.³ While the repeal of the Michigan use tax on services was mostly good news, it created a potential 17-hour compliance problem. The Michigan amnesty legislation was enacted, through SB 845, specifically to address this issue.

For Service Providers Who Did Not Collect Use Tax. SB 845 provides that service providers should not collect use tax on services subject to tax under HB 5198 prior to its repeal. Service providers that did not collect use tax on such services are not liable for failure to collect.

For Service Providers Who Did Collect Use Tax. SB 845 provides that for service providers that *did* collect use tax on services subject to tax under HB 5198, the service provider should either: (1) return the collected tax to their customers or (2) remit the tax to the Michigan Department of Treasury. For service providers choosing to remit the taxes to the Department, the taxes should be remitted when the service provider's use tax filing is due, which for most taxpayers would have been January 20, 2008. Where taxes have been remitted to the Department, the service provider's customers can file an application for a refund with the Department. The refund request form 4612 (12-07), which is available on the Department's website, must be accompanied by a receipt itemizing the service charge and use tax.

Retention Is Not An Option. While service providers can either remit or refund collected use taxes to their customers, it comes as no surprise that service providers cannot keep the use taxes. SB 845 provides that service providers who fail to remit the collected use taxes when due, and who did not otherwise return the use tax to their customers, are subject to penalties under Section 16 of the Use Tax Act. Under Section 16, a service provider that fails to remit collected tax is guilty of a misdemeanor and shall upon conviction be fined not less than \$100.00 nor more than \$500.00.⁴ Conviction for a

³ See "Michigan Repeals Services Tax in the Nick of Time," *Jones Day State Tax Return*, December 2007.

⁴ MCL 205.106 (Sec. 16).

second or subsequent offense shall be fined not less than \$500.00 nor more than \$5,000.00, or imprisoned in the county jail not more than one year, or by both such fine and imprisonment in the discretion of the court.■

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