



Report on Spring 2015 Tax Amnesty Program ^(*)

**Commonwealth of Massachusetts
Department of Revenue**

Mark E. Nunnelly
Commissioner of Revenue

October 2015

^(*) A two-month amnesty period that commenced on March 16, 2015 and ended on May 15, 2015

Purpose:

Pursuant to section 12 of chapter 2 of the Acts of 2015 (the “Act”), the Department of Revenue (DOR) is hereby submitting to the House and Senate Clerks, House and Senate Committees on Ways and Means, the Joint Committee on Revenue and the House and Senate Minority Leaders a report detailing the results of the spring 2015 tax amnesty program (the “Amnesty Program”). The Act directed the Commissioner of Revenue to maintain records of the amnesty provided, and file a report by September 1, 2015, on (i) the number of taxpayers provided with amnesty; (ii) the types of tax liability for which amnesty was provided and, for each type of liability, the amount of tax liability collected and the amount of penalties forgone by virtue of the Amnesty Program; and (iii) the total outstanding tax liability for amnesty-eligible taxpayers at the conclusion of the Amnesty Program and after the collection of all funds under the program.

Background:

The Act authorized the Commissioner of Revenue to conduct a two-month tax amnesty program during the fiscal year ending June 30, 2015, to encourage the payment of delinquent tax obligations to the Commonwealth. It also generally authorized the Commissioner to determine the scope of the program, including the particular tax types and periods covered, and including any limited look-back period for unfiled returns, provided, however, that within the program, the Commissioner shall include, but not be limited to including, the following tax type within the scope: corporate excise. Pursuant to this grant of authority, DOR established a two-month amnesty period commencing on March 16, 2015 and ending on May 15, 2015.

The scope of the tax amnesty program was limited to eligible taxpayers with existing tax liabilities for tax types (the “Eligible Tax Types”) that were not included among the tax types covered by the limited amnesty established under Technical Information Release 14-8 and section 264 of Chapter 165 of the Acts of 2014. These Eligible Tax Types include all corporate excise taxes imposed under G.L. c. 63 (corporate excise, financial institutions, insurance, public utilities, and banks), estate taxes imposed under G.L. c. 65C, fiduciary income taxes imposed under G.L. c. 62, and individual use tax on motor vehicles imposed under G.L. c. 64I. The Commissioner notified taxpayers of their eligibility to participate in the Amnesty Program. Only those taxpayers to whom a notice of eligibility to participate in the Amnesty Program (a “Tax Amnesty Notice”) had been issued were eligible. Under the Act, the Commissioner was authorized to waive unpaid penalties (and interest associated with unpaid penalties) if eligible taxpayers paid in full the underlying tax and interest owed by May 15, 2015.

To make eligible taxpayers aware of the Amnesty Program, DOR identified all eligible taxpayers with existing accounts receivable and issued a “Tax Amnesty Notice” to delinquent taxpayers. The Tax Amnesty Notice notified taxpayers of the total “Amnesty Balance Due” and the “Amnesty Savings” that would be waived for any fully paid period. DOR waived all unpaid penalties including those imposed for failure to timely file a return; failure to file a proper return; underpayment of tax attributable to negligence

or disregard of the tax laws or to a substantial understatement of tax; failure to timely pay a tax liability; failure to file, report or pay electronically; failure to pay the proper amount of any estimated tax payment; and failure to disclose an inconsistent filing position for such period.

The Commissioner did not grant amnesty to any taxpayer who 1) was engaged in pending litigation with the Commissioner if, as of March 16, 2015, the Appellate Tax Board or any court of law has made a determination in the Commissioner’s favor with regard to the issue being litigated, where (i) such determination relates either to the pending period or (ii) such determination relates to a prior tax period and the Commissioner concludes that the contested issue in the current period is substantially identical to the issue upon which the determination was made for the prior period; 2) was the subject of a tax-related criminal investigation or prosecution, 3) delivered or disclosed or had delivered or disclosed any false or fraudulent application, document, return, or other statement in connection with the Amnesty Program before or during the period of the Amnesty Program, 4) had a signed settlement agreement with the Commissioner, or 5) had paid all tax and interest due related to any outstanding assessment but, at the start of the amnesty period, still owed or was properly disputing penalties from that assessment. The comprehensive program requirements and exceptions are listed in Technical Information Release 15-2 attached hereto.

Overall Results:

The Department mailed 21,034 Tax Amnesty Notices to eligible taxpayers in advance of the amnesty period. The two-month tax amnesty program generated over \$18.6 million in full and partial payments made by 2,619 amnesty eligible taxpayers, which slightly exceeded the Department’s projections of \$18 million in amnesty collections for FY15. A subset of these taxpayers (2,190) made sufficient payments to result in the waiver of \$4.9 million in penalties associated with their amnesty approved periods. The total remaining outstanding tax liability for amnesty eligible taxpayers not in current payment agreements or disputing their liability (i.e., active receivables) is \$488.1 million.

The following table provides a breakdown of overall collections by tax type during the two-month amnesty period:

Tax Type Breakdown of Amnesty Collections by Status

Tax Type	Amnesty Collections	Penalties Foregone
<i>Corporate</i>	\$17,925,965.03	(\$4,740,707.66)
<i>Fiduciary Income</i>	\$201,451.02	(\$68,658.04)
<i>Sales on Motor Vehicle</i>	\$85,633.38	(\$3,678.39)
<i>Financial Institution</i>	\$43,436.16	(\$46,914.42)
<i>Estate</i>	\$363,825.84	(\$8,216.57)
Total	\$18,620,311.43	(4,868,175.08)

Taxpayer Information Release:

Below is copy of the Taxpayer Information Release issued by the Department of Revenue on March 26, 2015 – see: <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2015-releases/tir-15-2.html>.

TIR 15-2: Limited Amnesty Program for Taxpayers with Certain Tax Liabilities

I. Introduction

Section 12 of Chapter 2 of the Acts of 2015 provides that the Commissioner of Revenue shall establish a 60-day amnesty program during the fiscal year ending June 30, 2015 (the “Amnesty Program”) and determine the scope thereof. Pursuant to the grant of authority in Chapter 2, the Commissioner has established a 60-day amnesty period commencing on March 16 and ending on May 15, 2015 (the “Amnesty Period”), to encourage the payment of delinquent tax obligations to the Commonwealth. The Amnesty Program will apply to tax years or periods with respect to which a Notice of Assessment was issued by the Commissioner on or before January 1, 2015 and is limited to eligible taxpayers with existing tax liabilities for tax types (the “Eligible Tax Types”) that were not included among the tax types covered by the limited amnesty established under TIR 14-8 and section 264 of Chapter 165 of the Acts of 2014. These Eligible Tax Types include all corporate excise taxes imposed under G.L. c. 63 (corporate excise, financial institutions, insurance, public utilities, and banks), estate taxes imposed under G.L. c. 65C, fiduciary income taxes imposed under G.L. c. 62, and individual use tax on motor vehicles imposed under G.L. c. 64I. The Commissioner will notify taxpayers of their eligibility to participate in the Amnesty Program. Only those taxpayers to whom a Tax Amnesty Notice has been issued may be eligible.

Under the Amnesty Program, if a taxpayer is notified by the Commissioner that the taxpayer is eligible and the taxpayer pays the full amount of tax and interest due for any period as shown on the Tax Amnesty Notice, the Commissioner is authorized to waive all unpaid penalties including those imposed for failure to timely file a return;^[1] failure to file a proper return;^[2] underpayment of tax attributable to negligence or disregard of the tax laws or to a substantial understatement of tax;^[3] failure to timely pay a tax liability;^[4] failure to file, report or pay electronically;^[5] failure to pay the proper amount of any estimated tax payment;^[6] and failure to disclose an inconsistent filing position^[7] for such period.

When an eligible taxpayer pays the full outstanding balance of tax and interest with respect to previously filed returns or assessments shown on the Tax Amnesty Notice, the Commissioner may waive the unpaid penalties (and the portion of interest charges directly attributable to those penalties) as to that taxpayer for those tax periods. A taxpayer’s participation in the Amnesty Program shall constitute the taxpayer’s waiver of

the possibility of obtaining a refund of any amounts paid pursuant to the Amnesty Program. Similarly, a taxpayer's participation in the Amnesty Program shall constitute the taxpayer's waiver of any right to contest liability for the amounts paid pursuant to amnesty. Corporate taxpayers, to be eligible, must also be in compliance with the Massachusetts Secretary of State's filing requirements.

Penalties that have been assessed or that could be assessed by the Commissioner against a taxpayer for liabilities relating to tax types other than one or more of the Eligible Tax Types are not eligible for waiver under the Amnesty Program. An eligible taxpayer who participates in the Amnesty Program will not be eligible to participate in future amnesty programs for a period of ten years. St. 2015, c. 2, § 12.

II. Amnesty Period

The Commissioner has established the Amnesty Period to begin on March 16, 2015 and end on May 15, 2015.

III. Participation in Amnesty Program

A. Eligibility Requirements

1. Eligible Taxpayers

The Amnesty Program is generally open to a taxpayer who has been issued a Tax Amnesty Notice, who is not ineligible as described below, and who meets the following conditions.

(a) The taxpayer has an assessment of one of the following types:

- i. an unpaid and self-assessed tax liability stated on a bill issued by the Commissioner on or before January 1, 2015 for one of the Eligible Tax Types; or
- ii. a tax liability assessed by the Commissioner for one of the Eligible Tax Types dated on or before January 1, 2015 that remains unpaid.

(b) If the taxpayer is a corporation, the taxpayer is in compliance with the requirement to file an annual report imposed by the Secretary of State.

2. Ineligible Taxpayers

The following taxpayers are ineligible:

(a) Any taxpayer engaged in pending litigation with the Commissioner if, as of March 16, 2015, the Appellate Tax Board or any court of law has made a determination in the

Commissioner's favor with regard to the issue being litigated, where (i) such determination relates either to the pending period or (ii) such determination relates to a prior tax period and the Commissioner concludes that the contested issue in the current period is substantially identical to the issue upon which the determination was made for the prior period;

(b) Any taxpayer who has been or is the subject of a tax-related criminal investigation or prosecution;

(c) Any taxpayer who has delivered or disclosed a false or fraudulent application, document, return or other statement.

(d) Any taxpayer, with respect to tax periods regarding which the taxpayer has signed a settlement agreement with the Commissioner including, without limitation, any settlement reached through the Department's Litigation Bureau, Office of Appeals, or Offer-in-Settlement Unit; and

(e) Any taxpayer, with respect to tax periods covered by a settlement agreement, who still owes or is properly disputing penalties with regard to an assessment for those periods at the start of the Amnesty Period.

3. Tax Periods

The Amnesty Program applies to liabilities relating to Eligible Tax Types for taxable periods with respect to which a Notice of Assessment was issued by the Commissioner on or before January 1, 2015.

4. Taxpayers Currently Participating in Payment Agreements

Taxpayers who entered into a Payment Agreement with the Commissioner prior to the start of the Amnesty Period with respect to Eligible Tax Types may be eligible to participate in the Amnesty Program. The Commissioner will waive penalties associated with any period on the Tax Amnesty Notice for which tax and interest is paid in full by the May 15, 2015 deadline. The Commissioner will not waive any penalties associated with the tax liability covered by the Payment Agreement that have already been paid in accordance with the provisions of the Payment Agreement.

5. Waiver of Possibility of Refund or of Ability to Contest Liability; Taxpayers with Appeals Pending

In order to participate in the Amnesty Program, a taxpayer must agree to waive both the possibility of any refund of amounts paid pursuant to the Amnesty Program, and also the possibility of contesting liability for any amounts paid pursuant to the Amnesty Program. A taxpayer who has an appeal pending with respect to an assessment made by the

Commissioner for a period covered by this Amnesty Program is eligible to participate in the Amnesty Program if the taxpayer has been issued a Tax Amnesty Notice, timely pays all taxes and interest owed in full, and withdraws the appeal with prejudice.

B. Amnesty Program Payment Requirements

1. Payment in Full for Each Tax Period

Eligible taxpayers who make a full payment of all tax and interest due under the Amnesty Program for a particular tax type and period will be granted amnesty for unpaid penalties associated with such tax type and period.

Payments made by taxpayers under the Amnesty Program will be accepted online through the Department's Web File for Business or Web File for Income applications or in the form of a check or money order made payable to the Commonwealth of Massachusetts. If the taxpayer chooses to make a payment through the Department's website using a credit card, a convenience fee will be charged by the selected credit card vendor.

Payment online or by paper check must refer to the bill number from the Tax Amnesty Notice.

2. Due Date

Amnesty payments will be regarded as timely if the required payments are received by the appropriate office of the Department of Revenue by 5:00 p.m. Eastern Daylight Saving Time, May 15, 2015. In addition, if a payment is delivered by U.S. mail (or a recognized commercial delivery service) to the appropriate office after May 15, 2015, the payment will be considered timely if the date of the U.S. postmark (or other substantiating date mark) is on or before May 15, 2015.

IV. Scope of Amnesty

If a taxpayer qualifies for amnesty, the Commissioner will waive all unpaid penalties that could be assessed for Eligible Tax Types for the taxpayer's:

A. failure to timely file a return for any tax for any eligible tax periods, under G.L. c. 62C, §§ 30, 30A, 33, 34;

B. failure to file a proper return for any eligible tax periods, under G.L. c. 62C, § 28;

C. underpayment of tax attributable to negligence or disregard of the tax laws or to a substantial understatement of tax, under G.L. c. 62C, § 35A;

D. failure to timely pay any tax liability, under G.L. c. 62C, §§ 33, 35, and/or G.L. c. 63B, §§9, 10;

E. failure to file, report or pay electronically, under G.L. c. 62C, § 33(g);

F. failure to pay the proper amount of any estimated tax payment, under G.L. c. 62B, § 14; or

G. failure to disclose an inconsistent filing position under G.L. c. 62C, § 35D.

For eligible taxpayers, the above-described unpaid penalties will be waived only for taxable periods stated on a Notice of Assessment issued by the Commissioner on or before January 1, 2015. Interest, other than interest directly attributable to those penalties, cannot be waived.

An eligible taxpayer who participates in the Amnesty Program will not be eligible to participate in any future tax Amnesty Programs for a period of ten consecutive years, beginning with calendar year 2015.

V. Administration

All payments submitted to the Commissioner under the Amnesty Program relating to amnesty-eligible tax periods will be considered voluntary. Any overpayments will be applied to other periods with outstanding liabilities, if any, or refunded if no outstanding liabilities exist. Any such payments will be applied to the taxpayer's tax account in accordance with the provisions of 830 CMR 62C.33.1.

Participation in the Amnesty Program and payment of the tax and interest constitutes a waiver of statutory rights of appeal or abatement with regard to amounts paid pursuant to the amnesty.

VI. Information

Additional information about this limited Amnesty Program is available on the Department's website at www.mass.gov/dor or by calling (617) 887-6367 or toll free within Massachusetts at 1-800-392-6089.

/s/Amy Pitter

Amy Pitter

Commissioner of Revenue

AP:MTF:lab

March 16, 2015

TIR 15-2

[1] See G.L. c. 62C, § 30, 30A, 33, 34.

[2] See G.L. c. 62C, § 28.

[3] See G.L. c. 62C, § 35A.

[4] See G.L. c. 62C, §§ 33, 35; G.L. c. 63B, §§ 9, 10.

[5] See G.L. c. 62C, § 33(g).

[6] See G.L. c. 62B, § 14.

[7] See G.L. c. 62C, § 35D.