



Informational Guideline Release

Bureau of Accounts
Informational Guideline Release (IGR) No. 10-208
September 2010

MUNICIPAL TAX AMNESTY PROGRAM

Chapter 188, § 68 of the Acts of 2010

This Informational Guideline Release (IGR) informs local officials about recent legislation that allows cities and towns to adopt and implement a temporary tax amnesty program during fiscal year 2011.

Topical Index Key:

Accounting Policies and Procedures
Collection Procedures
Fees and Charges
Tax Bills

Distribution:

Collectors
Treasurers
Accountants/Auditors
Selectmen/Mayors
City/Town Managers/Exec. Secys.
Finance Directors
City/Town Councils
City Solicitors/Town Counsels

MUNICIPAL TAX AMNESTY PROGRAM

Chapter 188, § 68 of the Acts of 2010

SUMMARY:

This legislation allows cities and towns to adopt and implement temporary tax amnesty programs during fiscal year 2011. This legislation is now in effect.

The amnesty program must be enacted by the municipality's legislative body. It may provide for the waiver of all or a uniform percentage of interest, collection costs and penalties owed on delinquent property taxes, motor vehicle excises or boat excises, not the underlying tax or excise. Unlike previous local tax amnesty programs, some interest and collection costs cannot be waived as well. The taxpayer must pay the tax or excise within the amnesty period established under the program. That period may begin anytime after the effective date of the vote and must end no later than June 30, 2011.

GUIDELINES:

A. LOCAL ENACTMENT

A local tax amnesty program is established by the local legislative body. Policy decisions regarding the scope of the program, the period it will run and taxpayer eligibility requirements are to be made by the legislative body and cannot be delegated to the collector, treasurer or other board or officer.

1. Amnesty Coverage

An amnesty program may provide for the waiver of all or a uniform percentage of accrued interest, collection costs and penalties owed on a delinquent property tax, motor vehicle excise or boat excise ("the covered amount") upon full payment of the outstanding tax or excise, and all interest, collection costs and penalties not waived, by the end of the amnesty period established under the program. See Section B-3 below for definition of "covered amount."

The legislative body **must specify** the scope of the program in its vote, including:

- a. The type of local tax liabilities for which a waiver may be obtained.** The program may apply to any or all of the following types of local tax liabilities: real estate and personal property taxes assessed under G.L. c. 59, motor vehicle excises assessed under G.L. c. 60A or boat excises assessed under G.L. c. 60B.

Communities may choose to include all or specified categories of those liabilities within the scope of the program. For example, a community could vote to have the amnesty apply to:

- real estate and personal property taxes assessed for any fiscal year
- real estate taxes in tax title or assessed on owner-occupied residential properties
- motor vehicle excises assessed for calendar year 2005 and before, or
- boat excises assessed for fiscal years 2005 to 2010.

- b. **The percentage of accrued interest, collection costs and penalties that will be waived on the particular tax or excise liability.** The program may provide for a waiver of any percentage up to 100% of the "covered amount." **A community must waive the same percentage of the covered amount on all liabilities included within the program.**

2. **Amnesty Period**

The legislative body **must specify** in its vote the period of time the amnesty program will be in effect. The beginning date cannot be earlier than the effective date of the vote and the ending date cannot be later than June 30, 2011.

3. **Amnesty Eligibility**

The legislative body **must specify** in its vote any requirements taxpayers must meet in order to obtain an amnesty waiver. Eligibility requirements may include, for example:

- a. **Application requirements.** A community may require taxpayers to specifically apply for an amnesty waiver or may provide that the waiver shall automatically apply to any taxpayer who pays outstanding liabilities included within the program during the amnesty period and meets any other eligibility requirements.
- b. **Payment Procedures.** A community may require taxpayers to make full payment of the liability, and any percentage of the covered amount that is not waived, in a single installment or may permit them to make payment in more than one installment, **provided full payment is made before the end of the amnesty period.** A particular method of payment may also be required, *e.g.*, payment must be by money order or certified check.
- c. **Full settlement requirements.** The community may require taxpayers to pay all outstanding liabilities included in the program in order to obtain any waiver. For example, if the community's program includes all property taxes, motor vehicle excises and boat excises, the community may require taxpayers who owe any of those liabilities for any years to pay them all in full in order to obtain a waiver of the chosen percentage of the covered amount on each particular liability.

In addition, the community may require taxpayers to pay certain outstanding amounts other than those for which a waiver may be obtained. For example, if the community's program includes real estate taxes, it may require taxpayers to pay any delinquent personal property taxes in order to obtain a waiver of the chosen percentage of the covered amount on the real estate taxes.

Attached is sample language that may be used as a model for local program votes. (See attached "*Sample Local Tax Amnesty Program Vote*").

B. IMPLEMENTATION

The collector, or treasurer in the case of real estate taxes covered by a tax title, must grant amnesty to any taxpayer who meets the eligibility requirements set forth in the program approved by the legislative body. In implementing that program, the following definitions and guidelines apply.

1. Taxpayer

The ***taxpayer*** is the person assessed the tax or excise and personally liable for its payment. In the case of real estate taxes, the taxpayer may also be the administrator of the estate or executor of the will of the assessed owner, the current owner of the parcel, a tenant obligated to pay more than half the taxes on the parcel or anyone else who has an interest in or possession of the property.

Any taxpayer who is the subject of a criminal investigation or prosecution for failure to pay a property tax, motor vehicle excise or boat excise when the amnesty program begins **may not participate and be granted a waiver.**

Payment, and any application that may be required under program rules, may be accepted from the taxpayer, or anyone acting on the taxpayer's behalf.

2. Liability

The ***liability*** is the principal amount of the tax or excise included within the program that is overdue and unpaid. A real estate tax includes any municipal charge, fee, fine, penalty or other amount committed as part of the tax by the assessors for collection purposes.

A taxpayer who had a delinquency, made a partial payment sufficient to pay the principal amount of the tax or excise before those payments were prohibited by G.L. c. 60, § 3E, and now owes only the accrued interest, collection costs and penalties does not have an unpaid liability and may not receive a waiver of the balance due.

3. **Covered and Waived Amount**

The ***covered amount*** is the maximum amount that may be waived under the program. It is the total of accrued interest, and collection fees, charges and penalties that (1) are assessed by and due to the collector or treasurer under G.L. c. 60, § 15 or otherwise as part of the particular tax or excise liability because of the taxpayer's failure to timely pay the liability, (2) are unpaid, and (3) are required to be paid for that tax or excise to be considered paid in full, **except**:

- a. Collection fees, charges and penalties due on a particular tax or excise where the taxpayer has been given notice that a warrant to collect the tax or excise has been issued.

For example, if a taxpayer has been notified that a deputy collector has been issued a warrant to collect a delinquent boat excise, the collection fees, charges and penalties due on that excise are not part of the covered amount and may not be waived. If the taxpayer has only been given a demand for payment by the collector, however, the demand fee is part of the covered amount and may be waived.

- b. Accrued interest attributable to municipal charges, fees, fines or other amounts committed as part of the tax by the assessors for collection purposes, where the committed amounts stem from violations of statutes, by-laws or ordinances other than those requiring timely payment.

For example, accrued interest attributable to committed penalties imposed for failure to comply with information requests of the assessors made under G.L. c. 59, § 38D, or to committed charges assessed under G.L. c. 139, § 3A for failure to comply with an order to abate or remove a dangerous building, are not part of the covered amount and may not be waived. Accrued interest attributable to charges for sewer service is part of the covered amount that may be waived, however, because it is assessed solely for failure to pay the charges on time.

The ***waived amount*** is determined by applying the chosen percentage to the covered amount.

4. **Payment**

A taxpayer who fails **to pay timely and fully** all amounts required under the program is automatically ineligible for amnesty. Any payment made will be applied to the interest, collection costs and liability in the order required by G.L. c. 60, § 3E. The taxpayer will remain liable for the balance as well as any additional interest, collection costs and penalties that may accrue.

To be timely, a payment must be received by the collector or treasurer on or before the close of business on the date it is due under the program rules. As with any local tax and excise payment, it is not sufficient simply to mail the payment, or send it by delivery agent other than the United States Postal Service, on or before the due date.

5. Amnesty Documentation

Collectors, and treasurers in the case of taxes covered by a tax title, should provide taxpayers who pay all amounts required under the program with a written waiver and acknowledgment that the particular liabilities are considered paid in full.

No particular form is required. A notation on a municipal lien or tax title redemption certificate might suffice in the case of real estate taxes, or a separate document could be prepared specifically for this program. If an application is required under the program rules, it could also be used to notify the taxpayer of the action taken.

The waivers should be considered part of the collection or tax title records of the community and should be retained by the collector or treasurer for the same period of time as those records.

6. Abatements

Taxpayers who participate in the amnesty program do not forfeit local abatement rights.

C. ACCOUNTING PROCEDURES

1. Amnesty Collections

a. Use as FY11 Estimated Receipts

Amnesty payments of **excises** that are **received** up to the time the FY11 tax rate is set may be recognized as estimated receipts on page 3 of the tax rate recapitulation with supporting documentation.

b. Certification as Free Cash

Excise collections not included as estimated receipts in the setting of the FY11 tax rate, and **all** collections of prior year **property taxes**, received on or after July 1, 2010 will be reflected in the fund balance on June 30, 2011 and the free cash certified as of July 1, 2011 and available for appropriation during FY12.

The Bureau of Accounts will recognize these amnesty collections as an update to the July 1, 2010 free cash certification in order to make them available for appropriation during FY11. A community may request a free cash update at the same time the June 30, 2010 balance sheet and supporting documentation is submitted for free cash certification, or at a later date.

Any update will be based on actual collections, not projections. Therefore, communities that plan to use amnesty collections to support FY11 appropriations must choose an amnesty period that ends earlier than December 1, 2010 so that the collections can be documented and the Bureau can complete the free cash certification and update in sufficient time for any local action required before the tax rate is set and tax bills are issued.

2. Amnesty Report

Accounting officers must include a report on collections under their amnesty program with their year-end reports to the Bureau of Accounts. (See attached "*Report of Collections under Local Tax Amnesty Program*").

SAMPLE
LOCAL TAX AMNESTY PROGRAM VOTE
(For Illustration Purposes Only)

ARTICLE/ORDER. To see if the city/town will enact a temporary tax amnesty program during fiscal year 2011, in accordance with Chapter 188, § 68 of the Acts of 2010, or take any other action relative thereto.

VOTED: That the city/town enact the following tax amnesty program, in accordance with Chapter 188, § 68 of the Acts of 2010, in order to encourage the payment of certain delinquent tax obligations.

Section 1. Amnesty Period: The amnesty program shall begin on _____ and end on _____.

[Mandatory for community to specify amnesty period. Program cannot end any later than June 30, 2011.]

Section 2. Program Scope. A taxpayer [who meets all eligibility requirements set forth in Section 3] shall receive a waiver of _____ % of accrued interest, collection costs and penalties owed on any of the following types of tax liabilities upon full payment of the outstanding liability [and all interest, collection costs and penalties not waived] by the end of the amnesty period:

[Insert (1) tax and/or excise liabilities included within the program and (2) waiver percentage.]

[Mandatory for community to specify (1) tax and/or excise liabilities for which an amnesty waiver may be received and (2) percentage of interest, collection costs and penalties that will be waived.]

Section 3. Eligibility Requirements. To obtain the waiver set forth in Section 2, the taxpayer must meet all of the following requirements:

[Insert any discretionary local eligibility requirements.]

