

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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► SUBJECT

NEW YORK STATE INTRODUCES PENALTY AND INTEREST DISCOUNT ("PAID") PROGRAM

► SUMMARY

On December 4, 2009, Governor David Paterson signed into law a revenue measure that allows the Department of Taxation and Finance to administer a penalty and interest discount program for certain outstanding taxes, fees, or surcharge liabilities. Taxpayers with older, unpaid New York State assessments or final determinations will have the opportunity to save up to 80% on interest and penalties.

► LIABILITIES ELIGIBLE FOR DISCOUNT

Eligible liabilities include those that have become fixed and final, and for which an assessment or final determination was issued on or before December 31, 2006. Liabilities less than three years old are not eligible.

Other liabilities that are not eligible under the PAID program include penalties related to:

- fraud;
- the Voluntary Compliance Initiative;
- a willful failure to collect and remit withholding tax;
- a substantial understatement of tax;
- a reportable transaction understatement;
- aiding or assisting in the filing of fraudulent tax returns, reports, statements, or other documents;
- failure to disclose or provide reportable transaction information or return;
- failure to maintain a list of advisees (related to reportable transactions);
- tax preparer penalties due to a substantial understatement;
- promoting abusive tax shelters; or
- a conviction under the tax or penal law.

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▶ TAXPAYERS ELIGIBLE FOR DISCOUNT

Eligible taxpayers include individuals, partnerships, estates, trusts, corporations, LLCs, or any other “person” as described in the New York State Tax Code that has an eligible tax liability.

In addition, if an eligible taxpayer has entered into an installment agreement with the state (for an eligible tax liability) prior to the commencement of the program, the taxpayer may participate in the PAID program with respect to the outstanding liability. Note, however, that full payment of the reduced amount must be paid in full by the end of the program, not the end of the installment period.

▶ DISCOUNT RATES

The amount due under the PAID program is computed as follows:

1. For assessments or final determinations issued after December 31, 2003, and on or before December 31, 2006, the amount due is limited to the underlying tax liability plus 50% of the accrued interest and penalties.
2. For assessments or final determinations issued before December 31, 2003, the amount due is limited to the underlying tax liability plus 20% of the accrued interest and penalties.

▶ EFFECTIVE DATES

The program begins January 15, 2010, and ends March 15, 2010. A taxpayer’s liability for an assessment or final determination will be deemed as paid in full provided the taxpayer remits full payment of the reduced amount by March 15, 2010.

▶ PARTICIPATION IN PAID PROGRAM

The New York State Department of Taxation and Finance will mail notices to taxpayers who qualify for the PAID discounts, inviting them to participate in the program. If a notice is not received, beginning January 15, 2010, taxpayers will be able to access information on how to participate in the program on the Department’s Web site at www.nystax.gov. Taxpayers without Internet access can call toll-free at (888) 272-9697.

Note that taxpayers who do not take advantage of the PAID program and fail to remit all amounts due within the prescribed time period will be ineligible for the discount. Any unpaid tax debts will continue to accrue interest at the full statutory rate.

Further, no refunds or credits will be allowed for payments made under the program, and the state will not grant any refund or allow any credit with respect to payments made prior to participation in the program.

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