

Massachusetts Department of Revenue Introduces Pilot Voluntary Disclosure Program

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Monday, February 8, 2016

The Massachusetts Department of Revenue (the Department) released a draft administrative procedure introducing a pilot Voluntary Disclosure Program (the Program) for the settlement of uncertain tax issues for business taxpayers on January 19. The Department introduced this Program in response to a suggestion made by Scott Susko, an author of this article, and another practitioner, both of whom serve as taxpayer professional representatives on the Department's Advisory Council. We commend the Department for reacting to this suggestion in such a proactive manner.

The Program will provide "a process through which uncertain tax issues may be resolved on an expedited basis, generally within four months" (All quotations in this post are from the Department's draft administrative procedure).

We think this Program will be particularly helpful to public companies in resolving issues related to their financial statement reserves.

The Program defines an "uncertain tax issue" as an issue "for which there is no clear statutory guidance or controlling case law, and which has not been addressed by the Department in a regulation, letter ruling, or other public written statement," and "for which a taxpayer would be required to maintain a reserve in accordance with ASC 740: Accounting for Uncertainty in Income Taxes (formerly Fin 48)." The issue

also “must not have been addressed as part of a prior audit of the taxpayer, a prior application for abatement or amended return filed by the taxpayer, or a prior ruling request made by the taxpayer.”

To qualify for the Program, “any potential tax liability attributable to the uncertain tax issue(s) must be \$100,000 or more, exclusive of interest and penalties.” A taxpayer that is under audit or has received notice of an impending audit is not eligible for the Program. The Department has the “discretion to determine that the Program is not appropriate for specific cases.”

The Department “will consider settlement of an uncertain tax issue(s) where: (1) the taxpayer has presented its position on the issue(s) and the Department agrees that the tax treatment of the issue(s) is uncertain; and (2) the taxpayer has fully disclosed and documented the issue(s) and the facts associated with that issue(s).”

A taxpayer may initiate the process by submitting an anonymous letter to the Department, which will respond to the taxpayer within 30 days. If the Department accepts the taxpayer into the Program, the taxpayer may submit an application, including a settlement proposal and identifying the taxpayer, within 45 days of receiving the Department’s acceptance letter.

The Department will waive penalties related to the uncertain tax issue for a taxpayer that reaches an agreement with the Department pursuant to the Program, as well as for a taxpayer that does not reach an agreement with the Department “provided the taxpayer acted in good faith.”

The Department requested practitioner comments on the draft administrative procedure by February 1, and MWE submitted two technical comments.

Our first comment was that following the initial evaluation, the Department should issue to the taxpayer a one-page technical position explaining whether it does or does not agree with the taxpayer’s position and responding to the taxpayer’s settlement proposal. The Department’s position would not be final, but it would be a helpful starting point to the taxpayer in terms of determining whether it would like to participate in the program before identifying itself to the Department.

Our second comment was that following the initial evaluation, the Department should provide a range or framework for a potential deal with the taxpayer. The potential deal would not be binding, but it would give the taxpayer some comfort in moving forward with the program.

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