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Colorado and Denver launch separate tax amnesty programs beginning October 1

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A state tax amnesty program, which applies to individual and corporate taxpayers with outstanding Colorado tax liabilities due before December 31, 2010, is available from October 1 through November 15, 2011. Tax amnesty applies to all Colorado taxes, with the exception of the International Fuel Tax Agreement, the Passenger Mile Tax and the International Registration Program. In addition, the amnesty does not cover 2010 Colorado income tax that was due April 18, 2011. The state tax amnesty program offers a waiver of all penalties and 50 percent of the interest that would otherwise be owed on qualifying liabilities.

A city tax amnesty program, which runs from October 1 through December 30, 2011, applies to the principal excise taxes administered and collected by Denver. Those taxes include sales tax, retailer's use tax, consumer's use tax, and occupational privilege tax, for tax liabilities incurred on or before June 30, 2011. Other taxes, including property taxes, are not eligible for tax amnesty under the Denver program. The city program offers a waiver of all penalties and 50 percent of the interest that might otherwise be assessed.

State program specifics

Under the state's amnesty program, taxpayers can pay overdue taxes, plus one-half the interest due, without being subject to any fine or civil or criminal penalty otherwise provided by law. Taxpayers that participate in the amnesty program waive



the right to file a claim for refund or seek administrative or judicial review regarding the tax liability. Taxpayers that fail to pay the full amount of taxes due or commit willful fraud in filing under the terms of the program are subject to appropriate civil or criminal penalties. Amnesty is not available to any taxpayer that has been mailed a notice of deficiency before October 1, 2011, or to any taxpayer under investigation or prosecution for criminal or fraudulent activity for crimes related to any taxes collected by the Department of Revenue. Taxpayers unable to pay taxes due by November 15, 2011, are encouraged to make a partial payment with their amnesty return; however, the full amount of the tax due and the full amount of interest due under the amnesty program must be paid no later than December 31, 2011. If the full amount due is not paid by December 31, 2011, amnesty provisions no longer apply and the taxpayer will owe the full amount of interest and face penalties, as appropriate. All amnesty returns must be filed on paper forms, which are available on the department's website. At this point in time there are no provisions to impose "super penalties" on amnesty eligible delinquencies not paid during the amnesty period. See [S.B. 11-184](#), enacted 6/3/11. Please visit the [state's amnesty program website](#) for additional information.

Denver program specifics

To obtain the benefits offered under the Denver city amnesty program, a check for the full payment of taxes and the reduced interest amount must accompany an Application for Tax Amnesty. The application and payment must be received or postmarked by the final day amnesty is offered, December 30, 2011. For periods in which the taxpayer applies for amnesty, the taxpayer waives its right to future claims for refund, credits, or appeal. If the taxpayer applies for amnesty and is denied, Denver will apply any payments received to outstanding tax liabilities the taxpayer may have and will not refund the payment. If amnesty is granted and an audit later reveals additional taxes are due, amnesty that was granted will not be revoked for the amount that the taxpayer had self-assessed, but the additional tax due from an audit assessment would be subject to full penalty and interest charges. If the taxpayer knowingly files a false amnesty application form for a taxable period, amnesty will be revoked and full penalty and interest charges will be reinstated. Amnesty can apply to taxes under current audit by Denver but does not apply to taxes for which a taxpayer has been issued a Notice of Delinquency, Notice of Underpayment, or Notice of Final Determination, Assessment, and Demand for Payment by Denver prior to amnesty filing. In addition, amnesty does not apply to taxes for periods for which a taxpayer has entered into a written payment agreement for taxes due prior to October 1, 2011, or is being investigated or prosecuted for criminal or fraudulent activity related to its Denver taxes as of October 1, 2011. See Ordinance #403, Laws of 2011. For additional information, please read the [Denver program guidance](#).

PwC Observes

"While the Colorado amnesty program clearly excludes taxpayers that received a deficiency notice prior to October 1, 2011, taxpayers should carefully review any notice that they received to ensure that the notice is accurate," notes Rhonda Sparlin, SALT Director with PwC Denver. "Recent system implementations have created a significant increase in the number of notices being issued," Sparlin says, "however, some of these notices have been issued in error. Taxpayers need to act quickly so that

the Department can be notified about any error, thus allowing the taxpayer to participate in the program," adds Sparlin.

"Determining whether a taxpayer has potential income tax exposures requires an understanding of Colorado tax law and how provisions dealing with issues such as combined filing might differ from other states," says Todd Roberts, State and Local Tax Partner with PwC in Denver. For example, Colorado applies a unique "three out of six" test to determine whether an affiliated group member should be included in a combined report. In general, the test requires that a member meet three or more parts of a statutory six-part test for the current and preceding two tax years to be included in a combined report. While the member does not need to meet the same three criteria for all three years, at least three criteria must be met in each year for inclusion in a combined report. Some taxpayers may have filed combined reports that include holding companies that may not meet the required criteria for combination. Another challenging issue relates to the foreign source income exclusion, as Colorado's definition of foreign source income is narrower than the under the I.R.C.

"Determining whether a taxpayer has potential state, city and county sales and use tax exposures can be just as challenging," says Jim Erwin, State and Local Tax Manager with PwC in Denver. Denver, like a number of Colorado cities, is a home rule city with the power to self-administer certain government functions, including the power to levy sales and use taxes. Self-administration authority includes the ability to independently determine what transactions are subject to tax, the rate at which tax will be imposed, and how taxes must be collected and remitted, provided the exercise of authority does not exceed the self-governing powers granted under state laws.

The tax effect of home rule authority can surprise some taxpayers. For example, while Colorado provides an exemption for purchases of machinery and equipment used in a manufacturing process, Denver does not. In addition, the Denver sales and use tax rate is comparable to the combined Colorado and special jurisdiction tax rate, Erwin explains. That said, taxpayers may be surprised to learn that they have unpaid Denver sales and use taxes, even when state taxes are paid in full. More surprising to some is the amount of the exposure, given the tax rates at issue. The increased compliance burden attributable to filing home rule city returns and taxes separate and apart from state returns can also create challenges for some taxpayers.

Addressing these issues now can provide taxpayers a means to free up certain ASC 450 and ASC 740 reserves, before the end of the fiscal year. That might be good news for a number of SEC filers in today's competitive economic environment.

"It is not surprising that the Colorado Department of Revenue and Denver Treasury Division are heavily marketing their respective amnesty programs to taxpayers via the internet, various newswire services and mailings," Sparlin says. "The programs are viewed as a way to generate cash to fill budget gaps without the need to raise taxes. However, taxpayers are well advised to look before they leap."

While a waiver of all penalties and 50 percent of the interest that might otherwise be assessed might seem like a win-win situation, taxpayers may be better off if they enter into a [voluntary disclosure agreement](#), Sparlin suggests. The benefits of a VDA

include a waiver of older liabilities and penalties, a limited look-back period, and taxpayer anonymity. Those benefits need to be weighed against the cost of interest assessed on VDA liabilities, which is usually imposed at the statutory rates for the years at issue."

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