

Virginia Tax Amnesty Guidelines

These guidelines and rules are published by the Department of Taxation ("TAX") to provide guidance to taxpayers and tax practitioners regarding the 2009 Virginia Tax Amnesty program. The purpose of the program is to provide delinquent taxpayers with relief, as well as increase and accelerate the collection of delinquent taxes.

The 2009 Acts of Assembly, Chapter 611, established the 2009 Virginia Tax Amnesty program. In accordance with *Va. Code* § 58.1-1840.1(C), this document establishes the guidelines and rules for the procedures for participation in the program. The guidelines and rules issued by the Tax Commissioner are exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

I. Definitions

The term "Amnesty" means the 2009 Virginia Tax Amnesty program.

The term "amnesty benefits" means the provisions of *Va. Code* § 58.1-1840.1(D)(2), which allow for the waiver of all penalties and one half of the accrued interest upon payment of the full amount of the tax and one half of the amount of accrued interest due.

The term "amnesty eligible," as applied to any tax bill, tax assessment or delinquent return liability, means that such bill, assessment, or return liability meets the eligibility requirements set forth in Section III of these guidelines.

II. Overview of the Program

The 2009 Virginia Tax Amnesty program, titled Get Square VA, will run for a 60-day period, beginning on October 7, 2009, and ending on December 5, 2009. Generally, taxes administered or collected by TAX are eligible for Amnesty.

For amnesty eligible tax assessments or delinquent return liabilities, all penalties and one half of the accrued interest will be waived upon payment of the full amount of the tax and one half of the amount of accrued interest due. If an assessment or delinquent return is not eligible for amnesty benefits, or if a taxpayer does not comply with the requirements of Amnesty, penalties and interest will not be waived.

At the conclusion of Amnesty, any tax liability that was eligible for amnesty benefits, but remains unpaid, will be subject to a 20 percent post-amnesty penalty. The penalty applies to unpaid taxes only, not to outstanding balances of penalties or interest. The 20 percent amnesty penalty will be in addition to all other penalties.

III. Eligibility

Generally, individuals and businesses can participate in Amnesty to satisfy tax bills and file delinquent returns for taxes that are administered by TAX. In order to qualify, bills must be related to an amnesty eligible tax type and period and have an assessment date on or before July 9, 2009, while returns must be applicable to an eligible tax type and period. A complete list of the taxes and periods eligible for Amnesty is detailed below.

Eligible Periods for the 2009 Virginia Tax Amnesty Program

Types Administered by TAX	Periods Eligible for Amnesty
Aircraft Sales Tax	Month of May 2009 and prior
Aircraft Consumer Use Tax	Returns due by July 9, 2009 and prior
Apple Excise Tax	Taxable Year 2008 and prior
Bank Franchise Tax	Taxable Year 2008 and prior (state portion only)
Business Consumer's Use Tax	Month of May 2009 and prior
Cable Television Public Rights-of-Way Fee	Month of May 2009 and prior
Cigarette Tax	Filings due by July 9, 2009 and prior
Cigarette Consumer Use Tax	Month of May 2009 and prior
Communications Sales and Use Tax	Month of May 2009 and prior
Corn Assessment	Quarter ending March 2009 and prior
Corporate Income Tax	Taxable Year 2007 and prior
Cotton Assessment	Quarter ending March 2009 and prior
E-911 Tax on Land Line Telephone Service	Month of May 2009 and prior
Egg Excise Tax	Month of May 2009 and prior
Employer Income Tax Withholding	Month of May 2009 and prior
Estate Tax	Returns due by March 30, 2008 and prior
Fiduciary Income Tax	Taxable Year 2007 and prior
Forest Products Tax	Quarter ending March 2009 and prior
Individual Consumer's Use Tax	Returns due by May 1, 2009 and prior
Individual Income Tax	Taxable Year 2007 and prior
Litter Tax	Taxable Year 2008 and prior
Motor Vehicle Fuel Sales Tax	Month of May 2009 and prior
Pass-Through Entity Information Return	Taxable Year 2007 and prior
Peanut Excise Tax	Semi-Annual for December 31, 2008 and prior
Recordation Tax	Filings due by July 9, 2009 and prior

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Types Administered by TAX	Periods Eligible for Amnesty
Retail Sales Tax	Month of May 2009 and prior
Rolling Stock Tax on Railroads and Freight Car Companies	Taxable Year 2008 and prior
Sheep Assessment	Quarter ending March 2009 and prior
Small Grains Assessment	Quarter ending March 2009 and prior
Soft Drink Excise Tax	Taxable Year 2007 and prior
Tire Recycling Fee	Quarter ending March 2009 and prior
Tobacco Products Tax	Month of May 2009 and prior
Use Tax	Month of May 2009 and prior
Vending Machine Sales Tax	Month of May 2009 and prior
Watercraft Sales Tax	Month of May 2009 and prior
Watercraft Consumer Use Tax	Returns due by July 9, 2009 and prior

Eligible taxable periods are calculated from the original due date of the tax return, without consideration of filing extensions.

The following are not eligible for amnesty benefits:

1. Bills and accounts paid before October 7, 2009;
2. Federal tax assessments;
3. Local tax assessments;
4. Bills with an assessment date after July 9, 2009, with certain exceptions for bills issued during the Amnesty period (see Section IV and V);
5. All obligations of a taxpayer under criminal investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade the tax; and
6. All obligations of a taxpayer with an active jeopardy or fraud assessment.

IV. Terms

To receive the benefits of Amnesty, the taxpayer must pay all of the tax due and one half of the accrued interest for any amnesty eligible bill or delinquent return. An application form is not required for Amnesty.

Amnesty benefits will be granted on a bill-by-bill or return-by-return basis. For example, if a taxpayer has three outstanding bills and three delinquent returns, but cannot pay all of the tax and half of the accrued interest for all items, the taxpayer may

still participate in Amnesty to satisfy some of the amnesty eligible bills and/or delinquent returns. The taxpayer may choose to pay only two amnesty eligible bills under Amnesty and receive amnesty benefits for those bills. Taxpayers are not required to satisfy all outstanding bills and delinquent returns in order to participate.

Payments Related to Bills

With respect to amnesty eligible bills with an assessment date on or before July 9, 2009, payments must be postmarked by December 5, 2009 to qualify for amnesty benefits. Payments sent to TAX without a specified bill number will be applied to bills that are amnesty eligible first in order from smallest to largest Amnesty Amount Due and then to non amnesty eligible bills from newest to oldest. For example, suppose a taxpayer has four outstanding tax bills, two of which qualify for Amnesty. Bill 1 is not amnesty eligible and the amount due is \$500. Bill 2 is amnesty eligible and the Amnesty Amount Due is \$100. Bill 3 is not amnesty eligible and the amount due is \$100. Bill 4 is amnesty eligible and the Amnesty Amount Due is \$250. If the taxpayer sends a payment without a specified bill number, the payment will first be applied to Bill 2 as it is the smallest amnesty eligible bill. If there is any remaining payment after Bill 2 is satisfied, it will be applied to Bill 4 as it is the other amnesty eligible bill.

Payments Related to Returns

In order to receive the amnesty benefits, taxpayers are required to file by December 5, 2009 all relevant tax returns and associated documentation, such as statements of income, W-2's, etc. as would have been required if the return had been filed timely and properly. Taxpayers who underreported income, or overstated exemptions or deductions must file an amended return by December 5, 2009 to receive amnesty benefits. Payment of any additional tax should accompany the return.

Taxpayers who send returns for an amnesty eligible tax and an amnesty eligible period without payment or with insufficient payment will be assessed for any additional tax, penalties and interest due. If the assessment is paid under the amnesty terms by the end of the amnesty period, or within 30 days of the date the assessment was issued, whichever is later, the taxpayer will receive amnesty benefits.

Interest

An interest rate of 8 percent, which is the average of the interest rate charged over the preceding 5 years as required by Va. Code § 58.1-1840.1(E), will be used to determine the interest on previously unfiled returns or underreported income. Interest will be calculated from the due date of the return through October 6, 2009. Interest for previously delinquent returns or amended returns can be calculated using the Interest Calculator located on the Amnesty website, www.GetSquareVA.com.

Refunds

Refunds for previously unfiled tax returns are subject to the three-year statute of limitations regarding refunds as set forth in *Va. Code* §§ 58.1-499 and 58.1-1823. Taxpayers may receive a refund (or credit toward other liabilities) for an overpayment reported on a previously unfiled return or amended return only if the return is filed within three years from the original due date of the return.

If a taxpayer files an amended return during Amnesty that reduces his tax liability, the taxpayer will not receive amnesty benefits. A refund will be issued when the amended return amount due is less than the amount of payments received for the original return. In addition, refunds will be issued to taxpayers who overpay their amnesty amount through oversight or miscalculation.

All refunds issued in connection with Amnesty transactions are subject to offset against outstanding Virginia tax bills, as well as amounts owed to state and local government agencies and to the Internal Revenue Service.

Continued Collections

TAX will continue normal collection activities before, during, and after Amnesty. A taxpayer who chooses to wait until the amnesty period begins to pay an assessment faces the risk of collection action. Audits, liens, padlockings, revocations, and pending court actions will not cease during the amnesty period.

TAX will request criminal warrants during the amnesty period only to the extent that no other reasonable option exists and that a delay in the resolution of the case would jeopardize the interests of the Commonwealth. Once the amnesty period has ended, normal criminal prosecution activity will resume.

Impact of Taking Amnesty

When TAX receives an amnesty payment for an assessment, such payment will be deemed to be the taxpayer's revocation of the right to all current or future additional administrative or judicial appeals.

V. Special Cases

Assessments That Do Not Include Tax

Penalty only assessments for amnesty eligible tax types and periods will be waived under Amnesty and the taxpayer will not be required to take any action to qualify for amnesty benefits on such assessments.

If a taxpayer has an amnesty eligible assessment for penalty and interest or interest only and the total amount of interest for all such bills is less than or equal to \$50, the penalty, if applicable, and interest will be waived under Amnesty if none of the amnesty eligible assessments of the taxpayer include tax. The taxpayer will not be required to take any action to qualify for amnesty benefits on such assessment.

If a taxpayer has an amnesty eligible assessment for penalty and interest or interest only and the total amount of interest for all such bills is greater than \$50, the penalty, if applicable, and 50 percent of the interest will be waived under Amnesty if the taxpayer pays the remaining amount of the interest according to Amnesty terms and if none of the amnesty eligible assessments of the taxpayer include tax. TAX will issue amnesty notices for affected accounts showing how much interest must be paid in order for the taxpayer to receive amnesty benefits.

Payment Plans

Taxpayers who have entered into a payment plan with TAX or any private collection agency contracted by TAX prior to the beginning of Amnesty will be permitted to continue on those plans, regardless of whether they can or do participate in Amnesty. They will not be subject to the 20 percent amnesty penalty provided they remain current on their pre-existing plans. See Section VI for more information. If the taxpayer fails to make timely payments or otherwise fails to comply with the terms of any pre-existing plan, the 20 percent penalty will be applied.

Taxpayers who have entered into and are current with a payment plan with TAX or any private collection agency contracted by TAX prior to the beginning of Amnesty will be permitted to participate in Amnesty. If the bill is amnesty eligible and full payment is made according to amnesty terms during the amnesty period, that bill will receive amnesty benefits.

Taxpayers may enter into payment plans during Amnesty, but will not receive amnesty benefits unless full payment is made within the amnesty period. Taxpayers who enter into payment plans during Amnesty will not be subject to the 20 percent amnesty penalty provided they remain current on their payment plans. If the taxpayer fails to make timely payments or otherwise fails to comply with the terms of any payment plan, the 20 percent penalty will be applied.

Bills on Stop Prior to Amnesty

In certain circumstances, TAX will place a bill on stop, which means that there will be a temporary hold on collection action and penalty and interest updates. A bill on stop prior to Amnesty will be updated for penalty and interest so that the amnesty notice will reflect the proper amount that must be paid in order for a taxpayer to receive amnesty benefits.

For example, if a taxpayer files a formal appeal under *Va. Code* § 58.1-1821 for a bill, that bill will be placed on stop while the appeal is processed. Prior to Amnesty, the taxpayer's bill will be updated to reflect penalty and interest amounts through October 6, 2009, so that the amnesty notice mailed to the taxpayer includes the correct amount the taxpayer must pay to receive amnesty benefits. Although the penalty and interest will be updated, collection action will remain on hold.

Joint Filers

Taxpayers who file joint returns must both qualify for Amnesty on amnesty eligible bills and delinquent returns. For example, if one of the joint filers currently has a jeopardy assessment, all separate bills and delinquent returns for that filer and all joint bills and delinquent returns involving that filer will be ineligible. However, if the other joint filer is eligible for Amnesty, any separate bill of that filer would be eligible to receive amnesty benefits, even though no benefit would apply to the joint bills.

Joint filer bills and delinquent returns will be listed only under the primary filer on the amnesty notices. Therefore, joint filers should be prepared to provide the name and social security number for both of the joint filers when contacting TAX about a joint bill.

Taxpayers in Bankruptcy

Taxpayers who are debtors in a bankruptcy proceeding may still receive amnesty benefits if they come forward and pay under amnesty terms, but are encouraged to consult with legal counsel. Taxpayers will not be mailed an amnesty notice for any bill or debt that is being addressed through a bankruptcy proceeding.

Converted Assessments

Assessments that have been converted to responsible corporate officers under *Va. Code* § 58.1-1813 are eligible for amnesty benefits under the same amnesty terms applicable to the corresponding business entity. Both the applicable business bill and the related corporate officer must be eligible for amnesty in order for the converted assessment to be amnesty eligible.

Amnesty will apply to bill balances for responsible corporate officers in the same manner as it would apply to the business entity. For example, if a corporation had an assessment for \$100 of tax, \$50 of penalties, and \$20 of interest and the assessment was converted to three responsible corporate officers, each corporate officer would receive an assessment for a total of \$170, which would represent the tax, penalties, and interest of the corporation. The amnesty notice sent to each corporate officer regarding such bill would then show the total amount due as \$170 and an Amnesty Amount Due of \$110.

Bills from a business converted to more than one officer may be paid by any officer under the amnesty terms and all of the officers will then receive amnesty benefits for that particular bill.

Appeals Under § 58.1-1821

Taxpayers who have a pending appeal prior to or during Amnesty under *Va. Code* § 58.1-1821 on an amnesty eligible assessment may receive amnesty benefits by paying the full amount of the tax and one half of the accrued interest on the assessment. By choosing to pay under the amnesty terms, the taxpayer will terminate the current appeal.

Offers in Compromise

The offer in compromise process under *Va. Code* § 58.1-105 will continue during Amnesty and taxpayers that are the subject of an offer in compromise will be eligible for amnesty benefits on amnesty eligible assessments. A taxpayer may choose to terminate an offer on an amnesty eligible bill by paying the full tax and one half of the accrued interest due under the amnesty terms during the amnesty period.

Contested Assessments

Taxpayers who have contacted TAX to question an amnesty eligible assessment prior to or during Amnesty, but who have not filed an appeal under *Va. Code* § 58.1-1821 or requested an offer in compromise under *Va. Code* § 58.1-105, may receive amnesty benefits by paying the full amount of the tax and one half of the accrued interest on the assessment. By choosing to pay under the amnesty terms, the taxpayer will terminate the current protest. If the taxpayer chooses instead to continue with the contested assessment or informal appeal, the 20 percent amnesty penalty may apply.

Fraudulent Returns and Jeopardy or Fraud Assessments

No taxpayer under criminal investigation or prosecution for filing a fraudulent return is eligible for Amnesty. In addition, no taxpayer under criminal investigation or prosecution for failing to file a return with the intent to evade the tax is eligible for Amnesty. Lastly, no taxpayer with an active jeopardy or fraud assessment is eligible for Amnesty. All obligations of such taxpayers will be ineligible for Amnesty. For example, if a taxpayer has one fraud assessment and two outstanding bills not related to fraud, none of the bills will be amnesty eligible.

VI. Post-Amnesty

At the conclusion of Amnesty, any tax liability that was eligible for amnesty benefits but remains unpaid will be subject to a 20 percent penalty. The penalty applies to unpaid taxes only, not to outstanding balances of penalties or interest. The 20 percent

amnesty penalty will be in addition to all other penalties. The 20 percent penalty will not be applied to the following:

1. Assessments issued for additional amounts due on amnesty eligible returns, provided that the liability is paid by December 5, 2009 or within 30 days from the date of assessment, whichever is later.
2. Any bill for which a payment plan was established prior to or during the amnesty period, provided the taxpayer has made timely payments before, during and after the amnesty period and otherwise complies with the terms of the plan until the plan is successfully completed.
3. Any amnesty eligible bill that is being appealed under *Va. Code* § 58.1-1821 during the amnesty period, provided the taxpayer pays the liability as determined by the Tax Commissioner within 30 days from the date of the final determination. If the taxpayer fails to satisfy the remaining liability within the 30 day period, the 20 percent penalty will be applied.
4. Any amnesty eligible bill that is the subject of an offer in compromise under *Va. Code* § 58.1-105 during the amnesty period, provided that the taxpayer pays the remaining liability within the period specified in TAX's response to the offer in compromise. If the taxpayer fails to satisfy the remaining liability within the specified period, the 20 percent penalty will be applied.
5. Any bill or debt that is being addressed through a bankruptcy proceeding.
6. Any assessment generated from a field audit of a business for an amnesty eligible period, provided that the audit is TAX's first audit of the taxpayer, no penalty has been applied to the tax deficiency, any uncontested liability is paid within 30 days from the date of assessment, and payment for any contested liability remaining upon resolution of an appeal under *Va. Code* § 58.1-1821 is paid within 30 days from the date of the Tax Commissioner's final determination.
7. Any assessment generated from a field audit of a business for an amnesty eligible period in cases where the audit is a second or subsequent audit of the taxpayer, provided that the Compliance Ratio is greater than 85 percent for sales tax and greater than 60 percent for use tax, no penalty has been applied to the tax deficiency, any uncontested liability is paid within 30 days from the date of assessment, and payment for any contested liability remaining upon resolution of an appeal under *Va. Code* § 58.1-1821 is paid within 30 days from the date of the Tax Commissioner's final determination.
8. Any assessment for an amnesty eligible period for which the Tax Commissioner determines that sufficient justification exists for waiver of the 20 percent post-amnesty penalty.

VII. Additional Information

Amnesty Notices

Most taxpayers who are eligible for amnesty benefits will receive a notice through the mail. If an individual or business taxpayer has an outstanding tax bill or delinquent return that may be eligible and has NOT received a notice, he should review the eligibility information provided in Section III of these guidelines. If the taxpayer has a copy of the outstanding bill from TAX, he may access the secure QuickPay service, using the 5-digit bill number and a business ID number or social security number for access. The QuickPay service will allow taxpayers to research the status of their accounts in a free and secure Internet environment. If the taxpayer does NOT have a bill from TAX, he may call the toll-free phone number 1-888-560-0057.

Online Resources

Online resources available through the website, www.GetSquareVA.com, include:

Eligibility Guidelines
Payment Options, including QuickPay
Tax Forms and Instructions
Interest Calculator
Link to Virginia Department of Taxation website

How to Pay

TAX will provide multiple payment options during Amnesty:

- QuickPay - The QuickPay service provides customers a free and secure online opportunity to research their account and pay bills.
- VATAX Online - If a taxpayer is a registered VATAX Online user, the taxpayer can research his account and make payments during Amnesty.
- Credit card - Customers can pay current tax bills with a credit card through a service provider at 1-800-2PayTax (800-272-9829). The jurisdiction code for Virginia is 1080. A fee will apply.

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- Mail - Send a check, payable to the Virginia Department of Taxation, along with the return or bill payment voucher. Payments must be postmarked no later than December 5, 2009 and should be mailed to:
 - Business Taxes:
PO Box 26627, Richmond, VA 23261-6627
 - Individual Taxes:
PO Box 26685, Richmond, VA 23261-6685
- Estate Tax payments and Cigarette Tax payments must be paid by check. QuickPay and VATAX Online are not available for these taxes. Send a check, payable to the Virginia Department of Taxation, along with the return or bill payment voucher. Payments must be postmarked no later than December 5, 2009 and should be mailed to:
 - Cigarette Taxes:
PO Box 715, Richmond, VA 23218-0715
 - Estate Taxes:
PO Box 1500, Richmond, VA 23218-1500

How to Get Help

To obtain assistance by telephone:

Call: 1-888-560-0057

Hours: Monday through Thursday, 8:30 a.m. to 8:00 p.m.
Friday, 8:30 a.m. to 4:30 p.m.
Saturday, 8:30 a.m. to 12:30 p.m.
All times are Eastern Standard Time

Note: Assistance will be available on all holidays except Thanksgiving Day. On Saturday December 5, 2009, assistance will be available until midnight.

Callers who use the toll-free telephone number should be prepared to key in a social security number, or a Federal or State Business ID number.

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To obtain assistance through Live Chat:

Visit: www.GetSquareVA.com and click on the Live Chat icon

Hours: Monday through Friday, 7:00 a.m. to 9:00 p.m.
Saturday, 8:00 a.m. to 1:00 p.m.
All times are Eastern Standard Time

Note: Assistance will be available on all holidays except Thanksgiving Day. On Saturday December 5, 2009, assistance will be available until midnight.

Live Chat is available for taxpayers to ask both general questions as well as taxpayer specific questions. Live Chat users should be prepared to provide a social security number, or a Federal or State Business ID number, if they have taxpayer specific questions.

To obtain assistance in person:

Taxpayers may visit one of the walk-in locations available during Amnesty. Please note that the Northern Virginia location will only be open from November 23 through December 5.

Locations: Richmond
3610 West Broad Street
Richmond, Virginia 23230

Hampton Roads
6340 Center Drive, Building 7, Suite 101
Norfolk, Virginia 23502

Northern Virginia
Dunn Loring Courtyard Marriott
2722 Gallows Road
Vienna, Virginia 22180

Hours: Monday through Friday, 8:30 a.m. to 4:30 p.m.
All times are Eastern Standard Time

Note: Assistance will be available on all holidays except Thanksgiving Day. On Saturday December 5, 2009, assistance will be available from 8:30 a.m. to 4:30 p.m.

Taxpayers can use the Online Forms link from the website to obtain printable tax forms. Taxpayers may also request forms by using an automated 24-hour forms request line at (804) 440-2541.

Changes to Guidelines

The Tax Commissioner may add to or change these guidelines at any time during the amnesty period. Changes to the guidelines will be posted on the Amnesty website at www.GetSquareVA.com.

Approved:



Janie E. Bowen
Tax Commissioner