

Cohen Smith & Company, P.A.

NEWSLETTER



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Florida Tax Amnesty Program

Beginning July 1 through September 30, 2010, the State of Florida is

providing an opportunity to voluntarily pay overdue taxes with no penalty and reduced

interest. All taxes administered by the Department of Revenue are eligible, except unemployment tax.

Tax amnesty applies to tax, penalty, and interest that were due before July 1, 2010. You **must** complete a Tax Amnesty Agreement to participate.

If you believe you may have State tax liabilities, you may want to take advantage of tax amnesty program.

Under the program you will pay no penalty and only ½ the interest due, if you:

- Are reporting liability that the Department of Revenue did not know about.
- Are filing a late return for a tax obligation previously unknown to DOR.
- Are responding to a letter of inquiry or a self-audit request.

If you are responding to a Department of Revenue bill, delinquency notice, audit or other assessment, you will pay no penalty and only ¾ of the interest due,

Note: A 10 percent administrative collection processing fee (ACP fee) is imposed on any known debt over 90 days old. This fee **will not** be waived under the amnesty program. The fee is calculated on tax, penalty, and interest before any reduction allowed by the amnesty program.

What taxes are included in the tax amnesty program?

- Sales and use tax (including discretionary sales surtax)**
- Communication services tax**
- Corporate income and emergency excise tax**
- Documentary stamp tax**
- Fuel taxes (including local option taxes)**

For details on local taxes that may be included in amnesty, visit:

www.myflorida.com/dor/amnesty.

Examples of “overlooked taxes”

Tax law is complex and can be hard to fully understand. Here are examples of instances where taxpayers have “overlooked” sales tax they should have paid.

1. **Internet and out-of state purchases.**
2. **Purchasing an item tax-exempt for resale, but then using it in the business or for personal use.**
3. **Related party rental, such as renting your personally-owned building to your corporation.**

How do I get tax amnesty?

You must submit a Tax Amnesty Agreement (on paper or online at www.myflorida.com/dor/amnesty) by September 30, 2010.

The fastest and easiest way to apply for amnesty is to do it online. You will receive an amnesty agreement number once you have submitted all the required information. If you do not complete the agreement online, you should complete a paper Tax Amnesty Agreement (Form DR-100000) and mail to:

Tax Amnesty
Florida Department of Revenue
Post Office Box 5138
Tallahassee, Florida 32314-5138

What if I still have questions?

- Read Amnesty Frequently Asked Questions at:
www.myflorida.com/dor/amnesty
- Or contact us.



Deducting Business Bad Debts

If debt collection is a problem for your business, deducting uncollectible (bad) debts from your tax bill may somewhat lessen the sting of simply writing them off. Here is some basic information on deducting business bad debts.

First, the debt must be legitimate. A bona fide debt arises from a debtor-creditor relationship and is based on a valid and enforceable obligation to pay a fixed or determinable amount of money. For debt creation, the business must be able to show that it was the intent of the parties at the time of the transfer to create a debtor-creditor relationship. In other words, the business must be able to show that at the time of the transaction, there was a real expectation of repayment, and there was intent to enforce the indebtedness.

For most businesses, it is common to incur uncollectible or worthless debts. Two types of bad debt deductions are allowed by the IRS: business bad debts and nonbusiness bad debts. Business bad debts give rise to ordinary losses that can generally offset taxable income on a dollar-for-dollar basis. Nonbusiness (personal) bad debts are considered to be short-term capital losses. Because there is a limitation on deducting capital losses, distinguishing business and nonbusiness bad debts is critical.

Business bad debts generally originate as credit sales to customers for goods delivered or services provided. If a business sells goods or services on credit and the account receivable subsequently becomes worthless, a business bad debt deduction is permitted, but only if the revenue arising from the receivable was previously included in taxable income. This means that businesses that pay tax on the cash basis (taxable income is reported when cash is received), cannot claim a bad debt deduction.

Business bad debts can also take the form of loans to suppliers, clients, employees, and distributors. Additionally, a business bad debt deduction is allowed for any payments made in the capacity as guarantor, if the reason for guaranteeing the debt was business related. Here, the guarantor's payment results in a loan to the debtor, and the taxpayer is generally allowed a bad debt deduction once the loan becomes partially or totally worthless.

Worthlessness can be established when the business sues the debtor, and then shows the judgment is uncollectible. However, when the surrounding circumstances indicate a debt is worthless and uncollectible, and that legal action to collect the debt would in all probability not result in collection, proof of these facts is generally sufficient to justify the deduction.

Loans from IRAs Not Permitted

During this difficult economic period, taxpayers struggling financially should be wary of using IRA funds to supplement their income. In a recent real-life example, a taxpayer struggled to pay his business expenses, home mortgage, and family living expenses. To meet those needs, he withdrew funds from his Individual Retirement Account (IRA), which he intended to be a loan and not a distribution. He had previously borrowed money from his 401(k) plan to purchase a home.



However, in this particular case, the Tax Court determined that unlike a loan from a qualified employer plan, i.e., 401(k) plan (which may be permitted), a loan from an IRA to its owner is always a prohibited transaction (there is no exception for loans from IRAs).

The court's opinion added that, regrettably, there is no exception to the 10% early distribution tax for amounts used for business and living expenses (this 10% penalty is in addition to the regular income tax due on the distribution). Although the taxpayer's financial circumstances were not unusual during this tumultuous period, the tax code is sometimes unforgiving.

Note: It is permissible to withdraw funds from an IRA and redeposit the same amount back in to an IRA within 60 days to avoid taxation and the 10% penalty.

Distributions from Inherited IRAs

It is becoming increasingly common for individuals to inherit IRAs.

In this scenario, you may think your share of the inherited IRA can be rolled over tax-free into your own IRA, before the familiar 60-day deadline for rollovers has passed. While this seems like a very reasonable assumption, it is often incorrect. In fact, only the deceased IRA owner's surviving spouse is allowed to roll over distributions from an inherited IRA into his or her IRA. Nobody else can.

Thankfully, there is a way for nonspousal IRA beneficiaries to accomplish the same result as a tax-free rollover. A direct (trustee-to-trustee) transfer of an inherited traditional or Roth IRA into a (brand new) receiving IRA in the deceased account owner's name does not count as a rollover. The receiving IRA is a new IRA set up solely for the specific purpose of receiving the inherited balance from the deceased account owner's IRA. When the deceased account owner's IRA is a traditional IRA, the receiving IRA must be a traditional IRA. When the deceased account owner's IRA is a Roth IRA, the receiving IRA must be a Roth IRA.

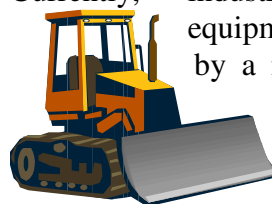
By taking advantage of this procedure, the balance in an inherited IRA with a sole beneficiary who is a nonspouse can be transferred tax-free into a receiving IRA controlled by the beneficiary. Similarly, an IRA with several nonspousal beneficiaries can be divided up and transferred tax-free into several receiving IRAs, one for each beneficiary. That way, each beneficiary can pursue his or her own investment strategy with the inherited money.

Even though the beneficiary is effectively in control of the receiving IRA, the account must be kept in the name of the deceased IRA owner to indicate that it is an inherited IRA, rather than an IRA that was originally set up to be owned by the beneficiary. For example, a receiving IRA might be titled "Coastal Bank, Custodian, for IRA of Joe T. Samson, Deceased, Fred Samson, Beneficiary."

In addition to the above, nonspousal inherited IRAs have required minimum distribution rules. These rules are complex, so if you inherit an IRA, contact us for more information.

Manufacturing And Spaceport Tax Incentives Passed By 2010 Florida Legislature

Currently, industrial machinery and equipment purchased for use by a new business in spaceport activities or a new or expanding business that manufactures, processes, compounds or produces tangible personal property at fixed locations (manufacturers) is exempt from sales tax on that machinery and equipment. Alternatively, such equipment purchased by these businesses when expanding is also exempt from sales tax, if the expanding business can show that the items are used to increase productive output by 10% or more.



Previously, in order to show that an expanding business was increasing productive output by 10% or more, the business needed to show that the number of units actually produced from a single plant or operation in a single continuous 12-month period increased by 10% or more. Further, the business had to ask the Florida Department of Revenue for approval, if the business wanted to use a 12-month period within the 24 months after installation, other than the 12 months immediately following installation of the machinery and equipment. Beginning July 1, 2010, a business has the option of showing 10% productivity in a product line, rather than a single plant or operation, in order to be eligible for the expanding business sales tax exemption. Further, the business may choose any 12-month period of their choice within the 24 months following installation for their showing of increased productivity, without getting approval from the Florida Department of Revenue.

Tax Calendar



JULY 2010

July 12

Employees who work for tips. If you received \$20 or more in tips during June, report them to your employer. You can use Form 4070.

July 15

Employers. For Social Security, Medicare, withheld income tax, and nonpayroll withholding, deposit the tax for payments in June if the monthly rule applies.

AUGUST 2010

August 2

Social Security, Medicare, and withheld income tax. File Form 941 for the second quarter of 2010. Deposit any undeposited tax. (If your tax liability is less than \$2,500, you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until August 10 to file the return.

Federal unemployment tax. Deposit the tax owed through June if more than \$500.

All employers. If you maintain an employee benefit plan, such as a pension, profit-sharing, or stock bonus plan, file Form 5500 or 5500-EZ for calendar year 2009. If you use a fiscal year as your plan year, file the form by the last day of the seventh month after the plan year ends.

August 10

Employees who work for tips. If you received \$20 or more in tips during July, report them to your employer. You can use Form 4070.

August 16

Social Security, Medicare, withheld income tax. If the monthly deposit rule applies, deposit the tax for payments in July.

Nonpayroll withholding. If the monthly deposit rule applies, deposit the tax for payments in July.

Other helpful line services



www.IRS.gov
www.MyFlorida.com
www.Volusia.org