

Tax Amnesty extended until June 15, 2012

In our November 2011 The Tax Advisor Special Bulletin, my partner Juan A. Alvarado informed you about the provisions of Act 218-2011, which provided the opportunity to pay, on or before February 29, 2012, with a total abatement of interest, surcharges and penalties, income, estate and gift tax debts, as well as debts arising from the special tax on real property (Tax Amnesty). The purpose of Act 218-2011 is to generate additional funds for public security and health programs. Please refer to that Special Bulletin for the details of the Tax Amnesty.

On April 19, 2012, the Governor of Puerto Rico signed Act 64-2012, which has retroactive application to March 1, 2012 and extends the Tax Amnesty approved in 2011 under Act 218-2011 until June 15, 2012.

Amendments to the Tax Amnesty brought by Act 64-2012

Under Act 64-2012, the tax debts that qualify for the Tax Amnesty are the same as under Act 218-2011 including, income, estate and gift taxes, and the special tax on real property, be them imposed under Act 120-1994, as amended, known as "Puerto Rico Internal Revenue Code of 1994"; under Act 1-2011, as amended, known as the "Internal Revenue Code for a New Puerto Rico"; or the Insurance Code; and applies to debts under payment or payroll discount plans. However, Act 64-2012 extended the due date for the payment of these debts with the abatement of interest, surcharges, penalties and other additions to the tax until June 15, 2012.

Except in some special cases where a payment plan is approved or a debt is timely objected, the tax debts that are not paid as of June 15, 2012 will be subject to the applicable interest, surcharges and penalties imposed by law.

Act 64-2011 clarifies that in the case of taxpayers whose tax returns are under administrative proceedings related to deficiency notices, who have received a final notice of deficiency, or who have contested a deficiency notice determined by the Secretary of the Treasury, in order to benefit from the Tax Amnesty, the amount payable will be the lesser of the principal amount from the original deficiency or the principal amount resulting from the administrative review process.

Also, with regard to taxpayers with judicial actions objecting the payment of a tax deficiency determined by the Secretary of the Treasury for which a final and firm decision is pending as of November 7, 2011, it clarifies that, in order to benefit from

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the Tax Amnesty, only the principal amount of the deficiency as originally established in the tax event which resulted in the judicial case, must be paid.

The amendments also provide that the qualifying tax debts are those owed to the Puerto Rico government by the taxpayer as of March 31, 2012.

Act 64-2012 left untouched the original date (February 29, 2012) for requesting a payment plan and the last date for payment under a payment plan (June 30, 2012). Therefore, this option is not available anymore.

Taxpayers may still object any qualifying tax debt on the Puerto Rico Treasury Department's records, and be able to benefit from the Tax Amnesty if the principal amount is paid within 30 days of the final notification of determination issued by the Secretary of the Treasury after the review of the objection claim. The last day to submit the claim of objection is June 15, 2012.

Act 64-2012 amended the Tax Amnesty to allow hospitals and bonafide farmers to benefit from it, even if they are enjoying tax

exemptions. Act 218-2011 provided that exempt corporations under Act 73-2008, known as the "Economic Incentives Act for the Development of Puerto Rico", or its predecessor acts, or Act 74-2010, known as the "Puerto Rico Tourist Development Act of 2010", or its predecessor acts, or under any other act of analogous nature, would not be able to benefit from the Tax Amnesty. Therefore, this amendment provides an exception to the exception, in order to allow hospitals and bonafide farmers to benefit from the Tax Amnesty. Also, exempt taxpayers with tax debts for periods not covered by the tax exemption grant could request the Puerto Rico Treasury Department to apply the provisions of the Tax Amnesty to such debts.

Finally, it is clarified that tax debts for the tax year 2011 or related to taxable years commenced during 2011 will not qualify for the Tax Amnesty.

Z&A's Comments:

During the last three years there have been two amnesties for property taxes and one amnesty for income taxes, gift and estate taxes, and special tax on real property. This extension of the Tax Amnesty probably presents an opportunity that

will not be seen for a long time after it ends.

This is the time to be proactive. Check the balances owed, if any, to the Puerto Rico Treasury Department, look for evidence to resolve those debts that you know are not correctly assessed and make a budget to cover the debts that are correctly assessed and save some interest, surcharges and penalties. We have assisted many clients to benefit from the tax amnesties, saving them thousands of dollars in tax debts. If you need help to obtain a debt certificate, to analyze the nature of the tax debts or, to pay or object tax debts with the Puerto Rico Treasury Department, please call us.

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