

## Governor of Puerto Rico Signed Act 218-2011: Tax Amnesty Effective Immediately

Act 218-2011 signed by the Governor of Puerto Rico on Monday, November 7, 2011 ("Tax Amnesty"), provides the opportunity to pay with a total abatement of interest, surcharges and penalties, income, estate and gift tax debts as well as the debts arising from the special tax on real property. The payment of the applicable debts under the Tax Amnesty must be made on or before February 29, 2012. The purpose of Act 218-2011 is to generate additional funds for public security and health programs. The Tax Amnesty is effective immediately upon its approval.

### Main Provisions of the Tax Amnesty

- Applies to income, estate and gift taxes as well as the special tax on real property imposed under Act 120-1994, as amended, known as "Internal Revenue Code of 1994," including debts under payment or payroll discount plans.
- To benefit from the Tax Amnesty, the taxpayer must pay on or before February 29, 2012 the total amount of the taxes owed to the Government of Puerto Rico imposed under Act 120-1994, as amended, Act 1-2011, as amended, known as the "Internal Revenue Code for a New Puerto Rico," as well as those imposed under the Insurance Code. That is, the taxpayer must pay tax debts that are not eligible for the Tax Amnesty, such as sales and use tax and 2011 withholding tax debts, in order to elect the benefits of the Tax Amnesty.
- The principal amount of tax debts must be paid regardless if it consists of interest or penalties assessed (this is typical of tax debts originating from tax audits).
- The taxpayer must indicate the taxable year or the tax debt notice to which the payment will be applied.
- Except in some special cases, NO partial payments on specific tax debt notices or taxable years will be accepted.
- Except in some cases where a payment plan is approved or a debt is timely objected, debts that are not paid as of February 29, 2012 will be subject to the applicable interest, surcharges and penalties (i.e., debts will continue with their carrying balances of interest, surcharges and penalties).

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- The term “income tax” is defined as including the income tax imposed by Subtitle A of Act 120-1994, including taxes withheld at source for any concept as well as those imposed by the Insurance Code.
- Payments under the provisions of the Tax Amnesty will be voluntary and final for all purposes and will not be subject to subsequent claims of refund or credit.

**Tax Returns under Audit or Judicial Procedure or Cases of Notices of Assessment and Collection.**

- Taxpayers under audit may benefit from the Tax Amnesty by paying the corresponding tax on the proposed audit adjustments (without any interest or penalties), resulting in the discontinuance of the audit process.
- Taxpayers under administrative proceedings on deficiency notices who have been sent final deficiency notices or that have contested a deficiency notice determined by the Secretary of the Treasury, may benefit from the Tax Amnesty by paying the total amount of the deficiency determined by the Secretary.
- Taxpayers that have been sent a notice of assessment and collection of taxes may benefit from the Tax Amnesty.

- In the case of taxpayers that have filed a judicial action objecting the payment of a deficiency notice determined by the Secretary of the Treasury for which a decision is pending as of November 7, 2011, may benefit from the Tax Amnesty by paying the total amount due (limited to principal), resulting in the discontinuance of the judicial process.

**Who else may benefit from the Tax Amnesty?**

- A taxpayer not able to pay the taxes during the term of the Tax Amnesty may request the Secretary of the Treasury a payment plan on or before February 29, 2012. Under the payment plan, the taxes must be paid on or before June 30, 2012.
- Taxpayers may object any tax debt on Treasury Department’s records if the claim is made on or before February 29, 2012. Except for frivolous claims, the taxpayer must pay the corresponding adjusted tax, if any, not later than 30 days after the date of the final notice of determination issued by the Secretary of the Treasury.

**Who may not benefit from the Tax Amnesty?**

- Corporations exempt under the provisions of Act 73-2008 known as “Economic Incentives Act for the Development of Puerto Rico” or its predecessor acts or under 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.

- The elected public officers.
- Taxpayers who have an ongoing proceeding for tax related crimes.
- Taxpayers who were convicted for tax fraud or whose source of income is illegal, or where activities or businesses may be identified as criminal activities under “the Act against Organized Crime.”

**Zaragoza & Alvarado’s comments on the Tax Amnesty**

Act 218-211 leaves us with various questions which hopefully will be answered when the Puerto Rico Treasury Department issues its regulations and/or circular letters. For example, corporations that hold an industrial or tourist tax incentives grant cannot benefit from the Tax Amnesty. It is not clear whether this exclusion covers the cases where these corporations act as mere withholding agents, like in the case of payroll income tax withholding. There is also little guidance as to how to proceed in the case of taxpayers that have not filed a tax return from a particular period and therefore, are not identified as debtors from a Treasury perspective. Furthermore, it is not clear whether, similar to prior amnesties, taxpayers with identified tax exposures, can approach the Puerto Rico Treasury Department on a voluntary basis and the case be processed as one under audit.

Notwithstanding the unanswered questions, we believe this is a great opportunity for taxpayers to analyze the applicable tax debts, present the required evidence to clear or reduce them, and settle the undisputed liabilities.

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