

**DETAILS OF TWO MONTH TAX AMNESTY
PLAN FOUND IN EMERGENCY RULES
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Emergency tax rules adopted by the Oklahoma Tax Commission (yet to be formally approved by the Oklahoma Gov. Brad Henry) provide interesting details as to the upcoming two month tax amnesty program created by S.B. 2034. The new amnesty initiative calls for the waiver of penalties, interest and any other fees due on eligible taxes if the taxpayer voluntarily files delinquent tax returns and pays the taxes due between September 15, 2008 and November 14, 2008. Taxes eligible under the initiative include: individual income tax, gasoline and diesel taxes, franchise tax, gross production and petroleum excise taxes, corporate income tax, bank “in lieu” taxes, withholding taxes, sales and use taxes and mixed beverage taxes. The eligible taxes must have been due prior to January 1, 2008. While the special initiative was drafted to be very inclusive of delinquent taxpayers, Rule 710:1-9-9(f) states that, "generally, a taxpayer who is currently in bankruptcy is not eligible for participation in the Voluntary Compliance Initiative". Nothing in the statutory language appears to support this conclusion.

The emergency rules make it clear that it is not enough to merely pay the unpaid taxes, taxpayers must actually prepare and file any amended or delinquent tax returns associated with such taxes. Rule 710:1-9-4(b). Any tax return or report filed under the special initiative is subject to review and examination. Rule 710:1-9-6. However, information submitted will be given the standard confidential treatment in accordance with 68 O.S. § 205. Rule 710:1-9-7.

The emergency rules set out the following penalties, in addition to the penalties for failure to timely pay or report taxes, as eligible for waiver:

1. Penalty for negligence or failure or refusal to file (68 O.S. § 217(E));
2. Penalty for fraud (68 O.S. § 217(F));

3. Penalty on the face of a tax warrant for failure to pay a delinquent tax (68 O.S. § 231.1);
4. Penalty for filing a report or return with insufficient information (68 O.S. § 247);
and
5. Any other penalty associated with a tax or fee levied or administered by the Commission pursuant to Titles 68 or 37 of the Oklahoma Statutes.

If the taxpayer cannot pay the taxes due within the two month initial period, this special program also allows waiver of penalty and interest where the taxpayer has entered into a payment plan. The emergency rules set forth important details regarding such payment plans including the length of such plans and the minimum down payment required:

1. If the payment plan is established between September 15th and September 30th, a minimum down payment of 20% must be made with the request. The first payment will be due on November 15, 2008 with at least 10% of the original base tax amount due monthly on the 15th of the month through June 15, 2009.
2. If the payment plan is established between October 1st and October 31st, a minimum down payment of 30% must be made with the request. The first payment will be due on December 15, 2008 with at least 10% of the original base tax amount due monthly on the 15th of the month through June 15, 2009.
3. If the payment plan is established between November 1st and November 14th, a minimum down payment of 40% must be made with the request. The first payment will be due on January 15, 2009 with at least 10% of the original base tax amount due monthly on the 15th of the month through June 15, 2009.

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