

NEW TAX AMNESTY INITIATIVE

By Kenneth Hunt and Jeffrey Pitts

A new tax amnesty initiative encouraging the voluntary disclosure and payment of taxes owed to the state flew through the Oklahoma House of Representatives and the Senate in three days, without much opposition. S.B. 2034 that was authored by Republicans Rep. Terrill and Sen. Mazzei was passed by the House, 96-1 on May 22, 2008, after previously winning approval in the Senate, 47-0, on May 19, 2008 and signed by Democratic Gov. Brad Henry on June 3, 2008. S.B. 2034 creates a new tax amnesty initiative that will waive penalties, interest and any other fees due on eligible taxes if the taxpayer voluntarily files delinquent tax returns and pays the taxes due during the time specified by the initiative. The Oklahoma Tax Commission ("OTC") anticipates that the initiative will increase collections by \$42 million, with an initial cost of \$7.3 million, resulting in a net revenue increase of \$34.7 million. Revenues raised by the initiative will be split between the general revenue fund and education reform fund.

The tax liabilities can be paid, or the taxpayer may enter into a payment program to pay the owed taxes in full, between September 15 and November 14 of this year. Once the taxes are paid during the specified time, the OTC will drop all interest, penalties, collection fees, costs and liens that may have been imposed otherwise. Unless the individual or entity is ineligible to participate or has filed a timely protest, any eligible taxes owed but not paid during the two month amnesty period will be subject to a new second delinquent penalty equal to the original penalty imposed for non-payment of the particular tax. The exhaustive list of taxes eligible under the initiative includes: 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.

S.B. 2034 also reduces tax benefits for certain other taxpayers. For any income tax returns filed after December 31, 2007 by corporations and fiduciaries, their federal taxable income will increase by 80 percent of any bonus depreciation received under the federal Economic Stimulus Act of 2008 for property put into service on or after January 1, 2008 and before January 1, 2009. Since certain taxpayers may have already filed their return claiming such bonus depreciation, the OTC will not impose penalties if an amended tax return is properly filed. Section 3 of the new law will also close a loophole involving the captive real estate investment trusts, which could previously have been used to avoid paying corporate income taxes. It requires a taxpayer to add back into its taxable Oklahoma income rents and interest paid to captive real estate investment trusts which payments were deductible for federal tax purposes. While the tax amnesty initiative and bonus depreciation provision have a May 25 effective date, the practical effective dates are September 15, 2008 for the initiative and for the bonus depreciation, it has a retroactive effective date covering property added on or after January 1, 2008. Section 3 (the REIT loophole closer) of the bill has an express retroactive effective date of January 1, 2008.

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