Kentucky Tax Talk: Where Art Thou Kentucky Amnesty?

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As the year winds down, many taxpayers are left wondering what happened to the Kentucky amnesty program. In this article, we try to break down how the tires fell off the 2022 amnesty wagon.

During the early days of this year's regular session of Kentucky's General Assembly, Rep. Ken Fleming, R-Louisville, introduced legislation that would authorize a tax amnesty during the fall of 2022.[1] Kentucky had not initiated a tax amnesty program since 2012. The last tax amnesty program before that occurred in 2002, so the General Assembly's for a tax amnesty program this year was not unexpected.

For all intents and purposes, the proposed amnesty provisions included in H.B. 176 mirrored the prior amnesty program provisions; however, the bill also, quite unusually, instructed the Kentucky Department of Revenue to pursue a third-party contractor to implement and run the amnesty program.

While speculative, there were likely two reasons driving this procurement provision. On the one hand, tossing the ball to a third party relieves the department, which like all industries is struggling with workforce retention, from the burden of administering the program.

On the other hand, adding some separation between the administration and success of the amnesty program and the department may have been partly politically driven, based on there being a Republican majority legislature and a Democrat executive branch, which includes the department.

The legislation set forth that the amnesty program would occur in October, should the department secure a third-party contractor. If the department was unable to do so, the legislation provided that amnesty would occur during a similar time frame in 2023.

While H.B. 176 did not move out of the House Appropriations and Revenue Committee, the bill's key provisions concerning amnesty, including the requirement for third-party procurement, were rolled into a larger tax reform bill, H.B. 8, which, after some amendment and discussions between the House and the Senate was ultimately enacted into law.[2][2]

Although Gov. Andy Beshear vetoed the bill as enacted by the General Assembly, the governor's veto was ultimately overridden by each chamber. H.B. 8 became law in April.

Although the original amnesty bill —H.B. 176 —was likely to pass on its own, as historically amnesty programs have received high bipartisan support, it is speculated that the bill was rolled into the larger tax-reform bill in efforts to push H.B. 8 forward. If H.B. 8 also contained the amnesty program this would garner more support for the bill in its entirety, for among other reasons, using the revenue raised from amnesty to offset tax cuts in H.B. 8.

Many taxpayers were anticipating amnesty this fall, and some maybe even actively planning to clean up outstanding Kentucky tax issues using the amnesty program. As we move into the end of the year, they may be asking "whatever happened to amnesty"?

In response to the enacted legislation's requirement that a third-party contractor develop and administer the amnesty, set to be held in fourth quarter 2022, the Department of Revenue issued a request for proposals on Aug. 8. This RFP included basic information about the amnesty program and the types of services were being requested.

The bidding and procurement window closed some 17 days later without further action or discussion by the Department of Revenue. In conjunction with the RFP, certain types of questions and answers were ultimately provided by the department, one of which probably tells the tale for where amnesty stands.

In the department's publicly filed responses to various questions from prospective bidders and others, the department noted that no appropriation was made by the General Assembly during the 2022 regular session to fund the necessary third-party contractor expenses associated with the amnesty program.

Reasonable minds could deduce that since no appropriation was made to fund costs associated with amnesty, amnesty would not go forward this fall. Despite the department's knowing it did not have funding, it can be assumed that the department moved forward with the RFP because the legislation required it to do so, even if it knew it would ultimately reject any offers.

In addition to disclosing that there was no funding to implement the program, the department also responded that it would:

- Not allow vendors to use previous Internal Revenue Service approved background checks and fingerprints for their employees working on the amnesty —but rather, would require new background checks and fingerprints for vendor employees working on the matter;
- Require development of a marketing scheme including logos, billboards, TV and radio advertisements for the amnesty;
- Not allow a work-from-home model; and
- Not extend the due date to allow prospective vendors to review the commonwealth's published answers to its RFP questions and adjust their proposals accordingly.

Needless to say, it appears clear that the commonwealth did not go out of its way to ensure a successful amnesty procurement this year.

As mentioned above, the tax reform bill H.B. 8 provided for an alternative amnesty window, in the event a successful procurement was not made this year. Thus, the department is now obligated to develop and administer an amnesty program during a 60-day period in 2023. As the department itself is already funded, additional funds are no longer needed to hire a third party to administer the program.

However, as the department, along with the rest of the world, faces staffing challenges and general backlog in the wake of the pandemic, it is fairly safe to say the amnesty program will put more strain on the department than it felt during prior programs and the use of a third-party vendor could have helped the program succeed in 2022. Still, the department administered the prior amnesty programs. The 2012 amnesty program occurred during

Beshear's father's term as Governor —i.e., former Gov. Steve Beshear —and many at the department have previously gone through the amnesty process.

Approximately 28,000 taxpayers took advantage of the amnesty program in 2012. This included 27,838 amnesty applications and 33,000 phone calls to call centers that would have been manned Monday through Friday from 8 a.m. to 8 p.m. Thus, taxpayers should consider that during the upcoming amnesty window other matters pending with the department may very well be put on hold, as much of the department's resources will be geared toward the success of the program.

While a date specific for the amnesty program was not set forth in the tax reform bill, it can be expected that, like each of Kentucky's last two amnesty programs, the amnesty will occur in the fall of 2023. Hopefully, we will hear more about this program as it is developed internally by the department. For now, taxpayers should continue to hold on to any past tax liabilities they wish to disclose through an amnesty program rolled out in the new year.[3]

For more information, contact any attorney with Frost Brown Todd's Tax practice group.

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[1] See 2022 H.B. 176 [22RS HB 176 (ky.gov)].
[2] See 2022 H.B. 8, 2022 Ky. Acts Chapter 212, Section 33. [22RS HB 8 (ky.gov)].
[3] For more information on amnesty and other legislative effects on your Kentucky taxes, visit Frost Brown's Tax Law Defined Blog.