

# State and Local Tax Bulletin

April 30, 2009



## Alabama Department of Revenue Amnesty Program Deadline Fast Approaching

By Matthew S. Houser and Bruce P. Ely

### Upcoming Seminars Involving Members Of Our SALT Practice Group

#### May 6, 2009

COST 2009 Southeastern Regional Meeting, Grandview Conference Center, Birmingham, Alabama. The conference will feature an update on critical state and local tax issues and legislation throughout the Southeast. Presenters will include representatives of COST, Bradley Arant Boult Cummings LLP, PricewaterhouseCoopers LLP, HealthSouth, Vulcan Materials, and the Commissioner of Revenue of the State of Alabama and his staff. For more information, please visit the COST website: [www.cost.org](http://www.cost.org).

#### May 18 – 21, 2009

COST 2009 Spring Audit Session/Income Tax Conference, Hyatt Regency Cambridge, Boston, Massachusetts. Bruce Ely will be a co-presenter in an update on the state taxation of LLCs and LLPs and their members/partners. For more information, please visit the COST website: [www.cost.org](http://www.cost.org).

#### May 20, 2009

Tax Executives Institute (TEI) State & Local Taxes Seminar, Lakewood Country Club, Lakewood, Colorado. Chris Grissom will be speaking on the State Taxation of LLPs/LLCs. For more information, please visit TEI's website: [www.tei.org](http://www.tei.org).

#### June 2, 2009

Matt Houser, Jimmy Long and Bruce Ely will serve as speakers at the annual "Alabama Sales and Use Tax" seminar sponsored by Lorman Education Services. The 8 hour presentation will be held on June 2 at The Doubletree Hotel in downtown Birmingham. For more information, please visit Lorman's website: [www.lorman.com](http://www.lorman.com).

Under the Alabama Department of Revenue's limited amnesty program, dubbed "Operation Clean Slate," taxpayers may avoid penalties and criminal prosecution if they voluntarily pay certain delinquent taxes due in the previous three years. That program, however, ends **May 15**. The ADOR issued a press release-reminder to that effect earlier this week.

When the program ends, the ADOR plans to activate the Discovery Module of its new integrated tax system; this module will assist them in identifying unfiled returns and unpaid taxes as well as underreported taxes. Reportedly, it is also designed to pick up Alabama filers who were audited by the Internal Revenue Service and paid additional federal income tax, but who failed to notify the ADOR of the audit changes. Commissioner Tim Russell said "I am very pleased for the State to have given our citizens this opportunity to "clean the slate" of any old tax liabilities before the Department uncovers those liabilities through other means. Although all taxpayers are responsible for paying their fair share of taxes at all times, it is unfortunate that there are many who choose not to report income and other taxable amounts. The Department is committed to using every resource at our disposal to identify, determine the proper amount of, and to collect every dollar that is owed to the State. It is only fair to the citizens of our great state who properly report and pay their taxes, that the non-compliant ones be found and the taxes due the State be collected."

In addition to the initial press release announcing Operation Clean Slate, the ADOR has also posted a helpful Q&A document on its website (<http://www.ador.state.al.us/cleanslate.html>) outlining the general parameters of the program. Also, members of our firm have conferred with ADOR officials on several occasions to answer some additional questions. Director of Tax Policy Curtis Stewart added: "With one month to go, the Department of Revenue has received 695 tax returns under Operation Clean Slate, along with hundreds of inquiries about the program (including written questions and phone calls). We expect a flurry of additional activity, now that we are past the April 15th annual income tax filing deadline, and nearing the May 15th closing date for the Clean Slate program.

"The program has been very successful, particularly for those people who have taken advantage of the opportunity to pay their past-due taxes without penalties, and without fear of attempted prosecution by the Department. Since they were only required to pay the taxes owed for three delinquent tax years,

*continued on page 2*

these newly-compliant taxpayers can now 'rest easy' about any older unpaid amounts. The Department has decided not to look further than three delinquent tax years for all taxpayers who are taking advantage of the program.

"Once the program period has run out, taxpayers will be subject to all applicable penalties for any delinquent liabilities identified by the Department. This includes the newly-revised penalty for failure to timely pay tax, that was expanded by Act 2009-144."

**What types of taxes are eligible?** Operation Clean Slate will apply to "virtually all" taxes administered by ADOR. ADOR has specifically stated that individual and corporate income, financial institution excise (FIET), business privilege, excise, severance, tobacco, and consumer use tax are covered. The program will also apply to withholding, sales, seller's use, and motor fuels taxes, but only for taxpayers who aren't currently registered for those taxes. ADOR officials say that the program "is not limited to" these taxes; for example, rental taxes reportedly are also eligible. If you have questions about other Alabama taxes, you or your tax adviser should contact the Taxpayer Advocate Office at (334) 242-1055 or email [cleanslate@revenue.alabama.gov](mailto:cleanslate@revenue.alabama.gov).

**Does the program apply only to taxpayers who haven't previously filed tax returns?** No. Unlike ADOR's Voluntary Disclosure Program, Operation Clean Slate is available to taxpayers who have previously filed returns – with the exceptions mentioned above. Taxpayers who have previously filed withholding, sales, seller's use, or motor fuel tax returns are not eligible for the program for that specific tax; they would, however, be eligible for other taxes. Amended returns for other taxes are encouraged under Operation Clean Slate.

**Does the program apply to taxpayers currently under audit or being investigated by ADOR?** The program does not apply to taxpayers who are "already under investigation" or "have been contacted by ADOR as to their proper liability." ADOR has not further defined these terms, although ADOR officials have indicated to us that the mere receipt of a nexus questionnaire will *not* disqualify a taxpayer. Taxpayers with outstanding debts on the ADOR's records (e.g., a bill, an assessment, or collection action) are not eligible.

**What are the benefits of participating in Operation Clean Slate?** ADOR will waive all applicable civil and criminal penalties, including penalties for fraud and negligence. ADOR will also not seek criminal prosecution for matters disclosed. In addition, the look-back period will be limited to three years in most cases. Although ADOR has not specifically taken a position on the matter

yet, we are concerned that the penalty for underpayment of an estimated tax (see, e.g., *Ala. Code* §§ 40-18-80, -80.1) will *not* be waived, because ADOR has previously treated this penalty as an interest charge—and not a penalty—under its Voluntary Disclosure Program.

**What about interest?** According to the ADOR, interest cannot be waived. But it is not necessary to calculate and pay interest when filing returns under Operation Clean Slate. The ADOR states that they will send the participant a bill for interest, and interest must be paid to the ADOR within 90 days of this bill, or penalties and taxes for prior years may be imposed.

**How should interested taxpayers proceed?** Taxpayers must file delinquent and amended returns, with payment of the tax, by **May 15**. The returns and payment can be mailed to Alabama Department of Revenue, Operation Clean Slate, P.O. Box 327010, Montgomery, Alabama 36132-7010. However, an informal contact with ADOR personnel, to confirm the applicability of this amnesty program to the particular taxpayer, is advisable. In addition, "Operation Clean Slate" must be clearly labeled on the front page of every form. We are instructed not to send the forms to the address listed on the forms; instead, they must be sent to the Operation Clean Slate P.O. Box.

**How does the three-year look-back period work?** For most taxes, ADOR will only require disclosure of past due liabilities for the most recent 3 years (or 36 months) that are past due as of February 1, 2009. For example, a taxpayer would need to file income tax returns for 2005, 2006, and 2007 (the 2008 return is not yet past due). For monthly returns (commonly due on the 20<sup>th</sup> of the following month), taxpayers would need to disclose for the period beginning January 2006 and forward. FIET returns should include 2007, 2008 and 2009 since those returns and the tax are due (in advance) March 15. The ADOR guidelines state that they will not seek to collect tax, penalties or interest for prior tax periods.

For all "trust fund" taxes (e.g., sales, seller's use, certain motor fuels, withholding taxes), however, any tax that has been withheld from employees or collected from the customer must be disclosed and remitted, *regardless of when collected or withheld*.

**How is Operation Clean Slate different from their Voluntary Disclosure Program?** The ADOR has for several years offered a Voluntary Disclosure Program, and they assure us that it remains active. The primary differences between the two programs are summarized as follows:

Operation Clean Slate will apply to more types of state-level and ADOR-administered local taxes. Only corporate income, business privilege, withholding,

and sales and use taxes are eligible for voluntary disclosure.

Operation Clean Slate will apply to taxpayers who have previously registered or filed returns with ADOR (except sales, seller's use, motor fuels, and withholding taxes). Conversely, voluntary disclosure guidelines require the taxpayer not to have filed a return with the ADOR in the last seven years and do not allow amended returns.

Voluntary Disclosure is anonymous. A taxpayer's representative typically obtains a signed Voluntary Disclosure Agreement from the ADOR before the taxpayer is identified. While this agreement is invalid if the ADOR later discovers that the taxpayer was not eligible for the Voluntary Disclosure Program as defined in the agreement (and thus probably would not be eligible for Operation Clean Slate, either), some taxpayers may receive more comfort in relying on a signed VDA instead of two press releases and a list of Q&A on the ADOR's website, which is all ADOR has issued for Operation Clean Slate to date.

Please contact any member of our SALT Practice Group if we can assist you or your client.

### **Bradley Arant Boult Cummings LLP Office Locations:**

#### **ALABAMA**

One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35023  
205.521.8000

200 Clinton Avenue West, Suite 900  
Huntsville, AL 35801  
256.517.5100

The Alabama Center for Commerce  
401 Adams Avenue, Suite 780  
Montgomery, AL 36104  
334.956.7700

#### **MISSISSIPPI**

188 E. Capitol Street, Suite 450  
Jackson, MS 39201  
601.948.8000

#### **WASHINGTON, DC**

1133 Connecticut Avenue NW, 12th Floor  
Washington, DC 20036  
202.393.7150

#### **NORTH CAROLINA**

100 North Tryon Street, Suite 2690  
Charlotte, NC 28202  
704.338.6000

#### **TENNESSEE**

1600 Division Street, Suite 700  
Nashville, TN 37203  
615.244.2582

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### **SALT Practice Group:**

Bruce P. Ely, Chair  
(205) 521-8366  
[bely@babarc.com](mailto:bely@babarc.com)

Joseph W. Gibbs  
(615) 252-2317  
[jgibbs@babarc.com](mailto:jgibbs@babarc.com)

W. Stanley Gregory  
(334) 956-7604  
[sgregory@babarc.com](mailto:sgregory@babarc.com)

Christopher R. Grissom  
(205) 521-8514  
[cgrissom@babarc.com](mailto:cgrissom@babarc.com)

K. Wood Herren  
(205) 521-8505  
[wherren@babarc.com](mailto:wherren@babarc.com)

Matthew S. Houser  
(205) 521-8680  
[mhouser@babarc.com](mailto:mhouser@babarc.com)

James E. Long, Jr.  
(205) 521-8626  
[jelong@babarc.com](mailto:jelong@babarc.com)

Patricia Head Moskal  
(615) 252-2369  
[pmoskal@babarc.com](mailto:pmoskal@babarc.com)

Brian S. Shelton  
(615) 252-2313  
[bshelton@babarc.com](mailto:bshelton@babarc.com)

William T. Thistle, II  
(205) 521-8985  
[wthistle@babarc.com](mailto:wthistle@babarc.com)

Robert C. Walthall  
(205) 521-8308  
[rwalthall@babarc.com](mailto:rwalthall@babarc.com)

Ashley G. White  
(256) 517-5106  
[awhite@babarc.com](mailto:awhite@babarc.com)

[www.babarc.com](http://www.babarc.com)