

To Our Clients and Friends:

In the aftermath of the recent tax amnesty program, New York State is implementing a nonfiling initiative aimed at business entities that fail to withhold with respect to highly compensated executives ("executives") who are conducting activities in the state. Recent advances in data sharing and computer technology enable the Department of Taxation and Finance to more easily identify businesses and individuals with outstanding New York State tax liabilities.

I understand that the initiative will target:

1. Out-of-state business entities that fail to withhold on executives sent into New York to conduct limited activities or projects; and
2. In-state business entities that fail to withhold on out-of-state executives sent into New York to conduct limited activities or projects.

For example, a corporation that sends an executive into New York to conduct business once or twice a month during the year may be targeted for withholding tax based on this activity. Moreover, the corporation may be targeted for franchise tax, and the executive may be targeted for personal income tax.

There is no specific minimal activity exemption in connection with the requirement to withhold, so any activity, however slight, may trigger a nonfiling assessment. I understand that New York State is considering whether to carve out certain minimal activities in conjunction with the nonfiling initiative. However, no decision has been made at this time. In light of the above, business entities must carefully evaluate the activities of their executives in New York State, determine if a potentially significant nonfiling exposure exists, and take appropriate corrective action related thereto.

If nonfiling exposure does exist, The Genetelli Consulting Group can initiate a process known as "voluntary disclosure" which can provide a significant benefit to nonfilers in New York. The voluntary disclosure process allows a taxpayer to approach a taxing jurisdiction (i.e., New York State) anonymously. An agreement is negotiated in which the taxpayer agrees to file returns (or provide return information) and pay back taxes for a limited number of years (typically the 3 most recent years, however, in certain factual situations, even more favorable terms may be obtained), and timely file and pay taxes on a going

forward basis. In return, the taxing jurisdiction agrees to waive unpaid taxes for years prior to those covered by the agreement, as well as all penalties that could be imposed (New York State also typically waives interest in excess of the statutory minimum). Confidentiality is preserved during the voluntary disclosure process by not revealing the name of the taxpayer or any information that could identify the taxpayer until the voluntary disclosure agreement is finalized.

In the case of an individual, voluntary disclosure could possibly result in no overall additional tax liability due to the availability of nonresident credits. If voluntary disclosure is not pursued, the tax liability can extend back to the first year that activities triggered a filing requirement (and beyond the typical statute of limitations to claim nonresident credits). Thus, a proactive response is required to mitigate a potentially significant nonfiling exposure.

It can be expected that other states may follow New York's lead with respect to the nonfiling initiative. Accordingly, an evaluation of executive activities should be conducted by business entities in other states as well as New York. This evaluation should include a quantification of the potential nonfiling exposure, as well as the benefits that can be achieved by voluntary disclosure.

I will keep you apprised of current developments with respect to the nonfiling initiative in New York. If you have any questions regarding the within, please call me at (212) 684-4111.

Richard