

Massachusetts Department of Revenue, penalties, interest, and payment allocation.

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Benjamin Franklin said “the only things certain in life are death and taxes.” Although we know there are more things certain that can be added to that list, we must concede that paying taxes is indeed one of them. In dealing with the tax man, many find themselves being assessed an unpaid tax and penalties and interest that flows from it.

In this case, there is a subject that the taxpayer may want to look at — payment allocation. In years past, directing a partial payment to the tax itself instead of the penalties and interest that flowed from it would result in a reduction in the total amount paid. The taxpayer’s power to direct partial payments was established when the Massachusetts Supreme Judicial Court found that if a taxpayer directs partial payments to the tax itself and the payment is accepted, it must be honored, absent statutory authorization. Commissioner of Revenue v. Molesworth, 408 Mass. 580, 583 (1990). So, at that time when a taxpayer was faced with the situation of not having enough money to pay the Massachusetts Department of Revenue and sought to make a partial payment, designating the partial payment for the tax itself, and not the penalties or interest that flow from it, saved in the long run. See e.g., Commissioner of Revenue v. Molesworth, 408 Mass. 580, 583 (1990); Massachusetts Department of Revenue, Technical Information Release 91-2.

Before getting excited about finding a great way to save yourself taxes, there is another saying that applies — “all good things come to an end.” It did here, and soon. The Massachusetts legislature changed the law and allowed the computation of interest on both the tax and penalties on 1 January 1993. It also effectively ended the benefit of directing a partial payment generally ended because the total tax would not be reduced by this practice. Massachusetts Department of Revenue, Technical Information Release 92-6. Also (now that it generally does not matter) it appears that the Massachusetts DOR voluntarily decided to apply partial payments to the tax first. Id.

In any event, in complex situations, there may still be reasons a taxpayer would still want to allocate partial payments in a manner he desires. These will be addressed below, but first, there is an important trap for the unwary to avoid. It is to follow the regulations concerning allocation of payments found at 830 CMR 62C.33.1(8). The Massachusetts DOR now requires the use of Form TDP-1 or a letter containing specific required information to accompany the payment. Id. Thus, if payment allocation is desired, you must follow these rules.

Directing payment allocation may still be immensely beneficial if multiple tax years and tax types are owed. But if the taxpayer does not make the direction, the Massachusetts Department of Revenue makes the call. New regulations establish this. For example, absent specific instructions of payment allocation from the taxpayer, the Massachusetts Department of Revenue has significant latitude to apply payments as it desires that can be avoided. 830 CMR 62C.33.1(9)a (“In the absence of written taxpayer instructions

given in the manner provided in 830 CMR 62C.33.1(8), the Commissioner may apply a taxpayer's payments to its outstanding liabilities in any manner.”)

In addition, the Massachusetts DOR has outlined a payment application order that benefits it, instead of the taxpayer. See e.g., 830 CMR 62C.33.1(9) (indicating order of application of payments in absence of taxpayer direction). In some situations, it is better for the taxpayer to have certain tax types paid before others or have recent taxes paid instead of other older tax obligations. In these situations, allocating payment could change the way the Massachusetts DOR would have applied it and bring great benefit to the taxpayer. So, although some of the power and benefit of payment allocation has been eliminated in Massachusetts, it still may make a significant difference and benefit to the taxpayer to direct allocation of payments.

In closing, it is always best to make your tax payments on time, however, if you do get behind, consider employing payment allocation. Further, if you are facing such a question, you probably need legal counsel. Feel free to give this office a call.

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