SENATE, No. 1098



STATE OF NEW JERSEY

217th LEGISLATURE



INTRODUCED FEBRUARY 8, 2016

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Permits State tax debt forgiveness for taxpayers experiencing undue economic hardship.

CURRENT VERSION OF TEXT

As introduced.



An Act permitting State tax debt forgiveness for undue economic hardship, amending various sections of the statutory law.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. R.S.54:48-2 is amended to read as follows:

54:48-2. As used in this subtitle:

“Basic living expense” means an expense that provides for the health, welfare, or production of income of the individual taxpayer or the individual taxpayer’s family.

"Commissioner" means the Director of the Division of Taxation in the Department of the Treasury.

"Department" means the Division of Taxation in the Department of the Treasury.

"Director" means the Director of the Division of Taxation.

"Prime rate" means the average predominant prime rate, as determined by the Board of Governors of the Federal Reserve System, quoted by commercial banks to large businesses as of the first business day of the calendar quarter within which the payment was due; except that as to the calculation of interest accruing on and after the July 1 next following enactment of P.L.1992, c.175 "prime rate" means that rate quoted as of December 1 of the calendar year immediately preceding the calendar year in which the payment was due, provided however, that if the director determines that the prime rate quoted by commercial banks to large businesses varies by more than one percentage point from the rate otherwise determined, the director shall redetermine the prime rate to be that quoted prime rate for subsequent calendar quarters of the calendar year in which payments become due.

"State tax" means any tax which is payable to or collectible by the director, and "State tax law" means any law which levies or imposes a State tax as herein defined.

"Taxpayer" means any person owing or liable to pay any State tax or any person deemed by the director to be so owing or liable.

"Tax preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund under any State tax law.

“Undue economic hardship” means an individual taxpayer’s inability to pay reasonable basic living expenses as determined by the director. The director’s determination shall be based on the cost of basic living expenses relative to a taxpayer's financial condition with attention to the taxpayer’s: age, health, employment status, employment history, and income earning capacity; dependents’ number, age, and health; residential area’s cost of living; extraordinary circumstances, including, but not limited to, medical catastrophes, natural disasters, or special education expenses; and any other fact that the taxpayer claims which the director finds relevant to a determination of undue economic hardship.

(cf: P.L.2006, c.36, s.1)

2. R.S.54:49-11 is amended to read as follows: 54:49-11. a. If the failure to pay any such tax when due is explained to the satisfaction of the director, he may remit or waive the payment of the whole or any part of any penalty and may remit or waive the payment of any interest charge in excess of the rate of three percentage points above the prime rate including any such penalty or interest with respect to deficiency assessments made pursuant to R.S.54:49-6.

b. The director shall waive the payment of any part of any penalty or any part of any interest attributable to the taxpayer's reasonable reliance on erroneous advice furnished to the taxpayer in writing by an employee of the Division of Taxation acting in the employee's official capacity, provided that the penalty or interest did not result from a failure of the taxpayer to provide adequate or accurate information.

c. On or after the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), the director may also waive or remit the payment of penalties and interest, in whole or in part, if imposing the penalties and interest would cause an individual taxpayer an undue economic hardship as defined by R.S.54:48-2.

(P.L.1992, c.175, s.4)

3. Section 7 of P.L.1975, c.387 (C.54:53-7) is amended to read as follows:

7. a. The Director of the Division of Taxation may compromise criminal liabilities and any civil liability arising under the tax laws of the State.

Generally, compromise agreements associated with criminal or civil liability arising under tax laws of the State may be entered into prior to reference of a case involving such liability to the Attorney General for prosecution or defense. Any such liability may be compromised only upon one or both of the following grounds:

(1) Doubt as to liability; or

(2) Doubt as to collectability.

No such liability shall be compromised if the liability has been established by a court of competent jurisdiction or is certain, and there is no reasonable doubt as to the ability of the State to collect the amounts owing with respect to such liability.

However, on or after the date of enactment of P.L. , c.     (C.        ) (pending before the Legislature as this bill), for cases filed with the Tax Court the director may also enter into compromise agreements for any criminal or civil liability arising under tax laws of the State if imposing the liabilities would cause the individual taxpayer an undue economic hardship as defined by R.S.54:48-2. The director’s undue economic hardship compromise agreement authority shall apply without respect to a case’s reference to the Attorney General, the establishment of the liability by a court of competent jurisdiction, or the certainty of the liability.

b. The Director of the Division of Taxation may compromise the time for payment of a liability arising under the tax laws of the State pursuant to paragraphs (1) or (2) of this subsection.

(1) The time for payment of a liability shall be compromised under this **[**subsection**]** paragraph only on the grounds that the equities of the taxpayer's liability indicate that a compromise would be in the interest of the State and that without such a compromise the taxpayer would experience extreme financial hardship

(2) For payments scheduled on or after the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), the director may also compromise the timing for payment under this paragraph if maintaining the previously scheduled time of payment would cause an individual taxpayer an undue economic hardship as defined by R.S.54:48-2.

**[**A**]** c. Generally, a delayed payment or installment payment compromise agreement entered into pursuant to this section shall include interest on the unpaid balance of the liability at the rate of three percentage points above the prime rate. However, for delayed payments or installment payment compromise agreements allowed by the director on or after the date of enactment of P.L. , c.    (C.        ) (pending before the Legislature as this bill), interest on unpaid balances may also be abated, in whole or in part, if the director determines that imposing interest would cause an individual taxpayer undue economic hardship as defined by R.S.54:48-2.

(cf: P.L.1992, c.175, s.17)

4. Section 1 of P.L.1975, c.387 (C.54:53-1) is amended to read as follows:

1. The Director of the Division of Taxation is authorized to enter into a written agreement with any person relating to the liability of such person, or of the person or estate for whom he acts, in respect of any State tax for any taxable period ending prior or subsequent to the date of such agreement.

A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the director that the State will sustain no disadvantage through consummation of such an agreement.

On or after the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), the director may also enter into a closing agreement for any State tax liability with an individual taxpayer if collecting the liability would cause the taxpayer an undue economic hardship as defined by R.S.54:48-2.

(cf: P.L.1975, c.387, s.1)

5. Section 4 of P.L.1975, c.387 (C.54:53-4) is amended to read as follows:

4. A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of fact, or undue economic hardship as defined by R.S.54:48-2:

a. The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee or agent of the State of New Jersey, and;

b. In any suit, action or proceeding, such agreement, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded; provided, however, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of the law enacted subsequent to the date of such agreement and made applicable to such taxable period, and each closing agreement shall so state.

(cf: P.L.1975, c.387, s.4)

6. Section 9 of P.L.1975, c.387 (C.54:53-9) is amended to read as follows:

9. A compromise agreement shall relate to the entire liability of the taxpayer (including taxes, ad valorem penalties and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest or ad valorem penalties. Neither the taxpayer nor the State shall, upon the acceptance of an offer in compromise, be permitted to reopen the case except by reason of the following:

a. Falsification or concealment of assets by the taxpayer;

b. Mutual mistake of a material fact sufficient to cause a contract to be set aside; **[**or**]**

c. The significant change in the financial condition of a taxpayer with which the director has entered into an agreement under paragraph (1) of subsection b. of section 7 of P.L.1975, c.387 (C.54:53-7); or

d. On or after the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), collection of the liability established by a compromise agreement would cause an individual taxpayer undue economic hardship as defined by R.S.54:48-2.

However, acceptance of an offer in compromise of a civil liability shall not operate to remit a criminal liability, nor shall acceptance of a compromise of a criminal liability operate to remit a civil liability.

For the purpose of administering subsection c. of this section, the director may require a taxpayer to provide periodic statements of financial condition in such form as the director may prescribe. Action may be taken by the director under subsection c. only if the director gives notice to the taxpayer 30 days before the date of any action and the notice includes a statement of the reasons the director has for believing a significant change in the financial condition of the taxpayer has occurred.

(cf: P.L.1992, c.175, s.18)

7. This act shall take effect immediately.

STATEMENT

This bill permits State tax debt forgiveness for individual taxpayers experiencing undue economic hardship. The purpose of this bill is to relieve individuals facing significant economic challenges from burdensome and potentially uncollectible tax debt.

For taxpayers unable to afford basic living expenses, the bill provides three potential forms of tax debt relief:

(i) Interest & Penalty Relief;

(ii) Pre-Tax Court Filed Closing Agreement Relief; and

(iii) Post-Tax Court Filed Compromise Agreement Relief.

The bill is modeled after the New York offer in compromise program’s undue economic hardship relief provisions.

***(i) Interest & Penalty Relief***

Currently, the Division of Taxation may waive interest and penalties for reasonable cause, but that waiver is statutorily floored to not below three percentage points above the prime rate.

This bill allows interest and penalty relief without respect to interest rates for individual taxpayers facing undue economic hardship.

***(ii) Pre-Tax Court Filed Closing Agreement Relief***

Currently, the division may settle pre-Tax Court liability pursuant to a closing agreement for a sufficient reason and provided that the State suffers no disadvantage. Closing agreements may only be reopened upon a showing of fraud or similar circumstances.

This bill allows the division to enter into a closing agreement for pre-Tax Court filed liabilities if collecting the tax liability would cause an individual taxpayer an undue economic hardship. The bill also allows closing agreements to be reopened post-settlement if collection of a liability would cause an individual taxpayer an undue economic hardship.

***(iii) Post-Tax Court Filed Compromise Agreement Relief***

Currently, the division may compromise pre-judgment and pre-Attorney General referred tax liability if there is doubt as to liability or collectability. The division may also compromise the timing of payments through an installment payment schedule for situations involving extreme financial hardship if the compromise schedule does not compromise the interest of the State. Compromised installment payment schedules do not relieve a taxpayer from interest accrual. Further, compromise agreements may only be reopened under limited circumstances.

This bill allows the division to compromise tax liability for cases that have been filed with the Tax Court if imposing the liabilities would cause an individual taxpayer undue economic hardship. The bill also explicitly allows the division to compromise payment schedules based solely on a finding that the previously scheduled time of payment would cause an individual taxpayer undue economic hardship. Interest accrual on compromised installment payments may also be waived if collection would cause an individual taxpayer undue economic hardship. Further, the bill authorizes the division to reopen a compromise agreement if collection of the related liability would cause an individual taxpayer undue economic hardship.

The bill is scheduled to take effect immediately and apply to tax debt relief entered into on or the date of enactment.