

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.



1 AN ACT permitting State tax debt forgiveness for undue economic
2 hardship, amending various sections of the statutory law.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. R.S.54:48-2 is amended to read as follows:

8 54:48-2. As used in this subtitle:

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

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

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

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

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

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

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

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

40 “Undue economic hardship” means an individual taxpayer’s
41 inability to pay reasonable basic living expenses as determined by
42 the director. The director’s determination shall be based on the cost
43 of basic living expenses relative to a taxpayer's financial condition
44 with attention to the taxpayer’s: age, health, employment status,
45 employment history, and income earning capacity; dependents’

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 number, age, and health; residential area's cost of living;
2 extraordinary circumstances, including, but not limited to, medical
3 catastrophes, natural disasters, or special education expenses; and
4 any other fact that the taxpayer claims which the director finds
5 relevant to a determination of undue economic hardship.

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

7
8 2. R.S.54:49-11 is amended to read as follows: 54:49-11. a. If
9 the failure to pay any such tax when due is explained to the
10 satisfaction of the director, he may remit or waive the payment of
11 the whole or any part of any penalty and may remit or waive the
12 payment of any interest charge in excess of the rate of three
13 percentage points above the prime rate including any such penalty
14 or interest with respect to deficiency assessments made pursuant to
15 R.S.54:49-6.

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

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

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

30
31 3. Section 7 of P.L.1975, c.387 (C.54:53-7) is amended to read
32 as follows:

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

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

41 (1) Doubt as to liability; or

42 (2) Doubt as to collectability.

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

47 However, on or after the date of enactment of P.L. ,
48 c. (C.) (pending before the Legislature as this bill), for cases

1 filed with the Tax Court the director may also enter into
2 compromise agreements for any criminal or civil liability arising
3 under tax laws of the State if imposing the liabilities would cause
4 the individual taxpayer an undue economic hardship as defined by
5 R.S.54:48-2. The director's undue economic hardship compromise
6 agreement authority shall apply without respect to a case's
7 reference to the Attorney General, the establishment of the liability
8 by a court of competent jurisdiction, or the certainty of the liability.

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

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

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

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

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

35
36 4. Section 1 of P.L.1975, c.387 (C.54:53-1) is amended to read
37 as follows:

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

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

1 On or after the date of enactment of P.L. , c. (C.)
2 (pending before the Legislature as this bill), the director may also
3 enter into a closing agreement for any State tax liability with an
4 individual taxpayer if collecting the liability would cause the
5 taxpayer an undue economic hardship as defined by R.S.54:48-2.
6 (cf: P.L.1975, c.387, s.1)

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

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

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

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

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

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

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

39 a. Falsification or concealment of assets by the taxpayer;

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

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

46 d. On or after the date of enactment of P.L. , c. (C.)
47 (pending before the Legislature as this bill), collection of the
48 liability established by a compromise agreement would cause an

1 individual taxpayer undue economic hardship as defined by
2 R.S.54:48-2.

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

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

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

16
17 7. This act shall take effect immediately.

18
19 STATEMENT

20
21 This bill permits State tax debt forgiveness for individual
22 taxpayers experiencing undue economic hardship. The purpose of
23 this bill is to relieve individuals facing significant economic
24 challenges from burdensome and potentially uncollectible tax debt.

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

- 27 (i) Interest & Penalty Relief;
28 (ii) Pre-Tax Court Filed Closing Agreement Relief; and
29 (iii) Post-Tax Court Filed Compromise Agreement Relief.

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

32
33 ***(i) Interest & Penalty Relief***

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

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

40
41 ***(ii) Pre-Tax Court Filed Closing Agreement Relief***

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

46 This bill allows the division to enter into a closing agreement for
47 pre-Tax Court filed liabilities if collecting the tax liability would
48 cause an individual taxpayer an undue economic hardship. The bill

1 also allows closing agreements to be reopened post-settlement if
2 collection of a liability would cause an individual taxpayer an
3 undue economic hardship.

4

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

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

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

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