

# SENATE, No. 1020

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 22, 2018

**Sponsored by:**

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**District 25 (Morris and Somerset)**

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**District 25 (Morris and Somerset)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 10/25/2019)

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:

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

7  
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)

27  
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  
20 STATEMENT

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

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

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

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

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

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

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

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

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

47 This bill allows the division to enter into a closing agreement for  
48 pre-Tax Court filed liabilities if collecting the tax liability would

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

5

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

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

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

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