S T A T E O F N E W Y O R K

7381--B

2009-2010 Regular Sessions

I N A S S E M B L Y

April 2, 2009

Introduced by M. of A. COLTON, KELLNER, REILLY, WALKER, GIGLIO, CASTRO, EDDINGTON -- Multi-Sponsored by -- M. of A. CALHOUN, DelMONTE, MAISEL, MENG, STIRPE, TOWNSEND -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to requiring the commissioner of taxation and finance to publish on the department of taxation and finance website lists of taxpayers with tax delinquencies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 171 of the tax law is amended by adding a new subdivision twenty-ninth to read as follows:

TWENTY-NINTH. SHALL PREPARE, MAINTAIN, AND PUBLISH ON THE DEPARTMENT WEBSITE TWO LISTS: ONE OF WHICH SHALL CONTAIN THE NAMES OF TAXPAYERS THAT OWE DELINQUENT TAX AND ADDITIONS TO TAX FINALLY DETERMINED TO BE DUE FOR PERSONAL INCOME TAXES AND FOR BUSINESS TAXES PURSUANT TO ARTICLE TWENTY-TWO OF THE TAX LAW; AND THE OTHER LIST SHALL CONTAIN THE NAMES OF TAXPAYERS THAT OWE DELINQUENT TAX AND ADDITIONS TO TAX FINALLY DETERMINED TO BE DUE PURSUANT TO ARTICLES NINE, NINE-A, THIRTEEN, THIRTEEN-A, THIRTY-TWO, THIRTY-THREE AND THIRTY-THREE-A OF THE TAX LAW. (A) EACH LIST SHALL:

(1) CONTAIN THE NAMES OF TWO HUNDRED FIFTY TAXPAYERS OWING TO THIS STATE THE GREATEST AMOUNT OF DELINQUENT TAX AND ADDITIONS TO TAX, THE ADDRESS OF SUCH TAXPAYER, THE TYPE AND AMOUNT OF TAX AND ADDITIONS TO TAX DUE, AND THE DATE THE AMOUNT WAS FINALLY DETERMINED TO BE DUE;

(2) IN THE CASE OF ENTITIES OTHER THAN NATURAL PERSONS, NAME ANY PERSONS WHO WERE AT LEAST TWENTY-FIVE PERCENT OWNERS OR BENEFICIAL OWNERS OR WHO WERE RESPONSIBLE OFFICERS OF SUCH ENTITY AT OR AFTER THE TIME THE LIABILITY WAS CREATED;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(3) BE UPDATED ON A QUARTERLY BASIS; AND

(4) BE PUBLISHED NO SOONER THAN SIX MONTHS AFTER THE PROVISIONS OF THIS SUBDIVISION SHALL BECOME LAW.

(B) NOTWITHSTANDING SUBPARAGRAPH ONE OF PARAGRAPH (E) OF THIS SUBDIVISION, EACH NEWLY UPDATED LIST SHALL NOT INCLUDE THE NAMES OF TAXPAYERS THAT HAVE APPEARED ON PREVIOUS VERSIONS OF THE SAME LIST, UNLESS: (1) A SEPARATE INSTANCE OF UNPAID TAX OR ADDITIONS TO TAX, WHICH RANKS THE TAXPAYER'S NEW LIABILITY AMONG THE TOP TWO HUNDRED FIFTY, SUBSEQUENT TO THE PUBLISHING OF THE PRIOR QUARTER'S LIST OCCURS, OR (2) AT LEAST ONE YEAR HAS ELAPSED SINCE THE TAXPAYER APPEARED ON THE LIST, AND IN THE COMMISSIONER'S JUDGMENT, PLACING THE TAXPAYER ON THE LIST MAY SIGNIFICANTLY INCREASE THE LIKELIHOOD OF PAYMENT.

(C) NO TAXPAYER SHALL BE PLACED ON THE LIST, UNTIL: (1) A TAX WARRANT IS FILED AGAINST SUCH TAXPAYER FOR A DELINQUENT LIABILITY, AND (2) SIXTY DAYS HAVE ELAPSED FOLLOWING THE DATE OF MAILING A NOTICE BY CERTIFIED MAIL TO SUCH TAXPAYER, AND WHEN IT IS THE CASE, TO SUCH TAXPAYER'S OWNERS, BENEFICIAL OWNERS OR OFFICERS, OF THE COMMISSIONER'S INTENT TO INCLUDE SUCH TAXPAYER'S NAME AND OTHER REQUIRED INFORMATION ON THE LIST TO BE PUBLISHED.

(D) NO TAXPAYER SHALL BE INCLUDED ON THE LIST IF SUCH TAXPAYER HAS: (1) SINCE THE MAILING OF NOTICE OF THE COMMISSIONER'S INTENT, PAID THE LIABILITY IN FULL OR ENTERED INTO A WRITTEN AGREEMENT WITH THE DEPARTMENT FOR PAYMENT OF THE DELINQUENCY, OR (2) THE TOTAL LIABILITY FOR ALL TAX AND ADDITIONS TO TAX IS LESS THAN FIVE THOUSAND DOLLARS.

(E) FOR THE EXCLUSIVE PURPOSE OF ASCERTAINING A TAXPAYER'S INCLUSION ON THE PUBLISHED LIST, IN CALCULATING THE AMOUNT OF TAX AND ADDITIONS TO TAX, THERE SHALL BE EXCLUDED ANY AMOUNT OF TAX OR ADDITION TO TAX WHICH:

(1) HAS BEEN DETERMINED TO BE UNCOLLECTIBLE BECAUSE: (I) THE TAXPAYER HAS RECEIVED A DISCHARGE IN BANKRUPTCY WITH RESPECT TO THE TAXABLE PERIODS IN QUESTION; OR (II) THE TAXPAYER IS DECEASED AND REASONABLE COLLECTION MEASURES WILL NOT CAUSE THE DEBT TO BE COLLECTED FROM THE ASSETS OF THE TAXPAYER'S ESTATE; OR (III) THE TAXES ARE DEBTS BELONGING TO A BUSINESS AND THE DEPARTMENT IS UNABLE TO FIND THAT SUCH BUSINESS OR OTHER PERSONS RESPONSIBLE FOR THE DEBTS HAVE ASSETS FROM WHICH THE DEBTS MAY BE PAID; OR (IV) THE DEBT HAS BEEN OUTSTANDING ON THE RECORDS OF THE DEPARTMENT FOR MORE THAN SIX YEARS; OR

(2) IS THE SUBJECT OF AN AGREEMENT BETWEEN THE COMMISSIONER AND THE TAXPAYER FOR AN INSTALLMENT PAYMENT PLAN OF THE AMOUNT DUE AND WHICH IS NOT IN DEFAULT BY A PERIOD OF THIRTY-ONE DAYS; OR

(3) IS SUBJECT TO A STAY OF COLLECTION PURSUANT TO THE BANKRUPTCY CODE OF THE UNITED STATES; OR

(4) IN THE DISCRETION OF THE COMMISSIONER AND IN THE INTERESTS OF JUSTICE, HAS BEEN DEFERRED FROM COLLECTION FOR NO MORE THAN NINETY DAYS FOR THE PURPOSE OF RESEARCHING WHETHER OR NOT AN ERROR HAS OCCURRED IN CALCULATING THE AMOUNT DUE; OR

(5) THE COMMISSIONER, IN HIS OR HER DISCRETION, UPON RECEIPT OF A TAXPAYER'S WRITTEN REQUEST AND STATEMENT OF REASONABLE CAUSE, HAS DEEMED THE RESULT TO BE FROM EXTRAORDINARY CIRCUMSTANCES.

(F) THE NAMES AND INFORMATION OF TAXPAYERS APPEARING ON THE PUBLISHED LIST SHALL BE REMOVED WITHIN THIRTY DAYS OF THE RECEIPT OF FULL PAYMENT OF THE DELINQUENT LIABILITY OR RECEIPT OF THE TAXPAYER'S WRITTEN AGREEMENT WITH THE DEPARTMENT FOR PAYMENT OF THE DELINQUENCY. ANY ISSUANCE OF A BAD CHECK OR BREACH OF SUCH AGREEMENT MAY RESULT IN THE TAXPAYER'S NAME BEING IMMEDIATELY RETURNED TO THE PUBLISHED LIST.

(G) THE DEPARTMENT MAY PROMULGATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY AND PROPER TO IMPLEMENT THE PROVISIONS OF THIS SUBDIVISION.

(H) ANY DISCLOSURES MADE BY THE COMMISSIONER, IN A GOOD FAITH EFFORT TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION, SHALL NOT BE CONSIDERED A VIOLATION OF ANY LAW PROHIBITING DISCLOSURE OF TAXPAYER INFORMATION.

S 2. This act shall take effect immediately.