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

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2011-2012 Regular Sessions

I N A S S E M B L Y

March 3, 2011

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Ways and Means

AN ACT in relation to creating a tax amnesty program

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

Section 1. (a) Notwithstanding the provisions of any other law to the contrary, there is hereby established an amnesty program as described herein, to be administered by the commissioner of taxation and finance, to be effective for the period as prescribed by such commissioner, for all eligible taxpayers as described herein, owing any tax or surcharge imposed or formerly imposed by section 182, 182-a, 182-b (as repealed by chapter 400 of the laws of 1983), 183, 183-a, 184, 184-a, 186 (as repealed by chapter 63 of the laws of 2000), 186-b (as repealed by chapter 63 of the laws of 2000), 186-e, 189 (as repealed by chapter 63 of the laws of 2000), 189-a (as repealed by chapter 63 of the laws of 2000) or 189-b of article 9, or article 9-A, 12-A, 13, 13-A, 16 (as repealed by chapter 267 of the laws of 1987), 16-A (as repealed by chapter 267 of the laws of 1987), 18-A (as repealed by chapter 389 of the laws of 1997), 21, 22, 23 (as repealed by chapter 69 of the laws of 1978), 24 (as repealed by chapter 170 of the laws of 1994), 26, 26-A (as repealed by chapter 389 of the laws of 1997), 26-B, 28, 28-A, 31-B (as repealed by chapter 309 of the laws of 1996) or 33-A of the tax law, or authorized by article 12-A, 29, 30, 30-A or 30-B of the tax law or article 2-E of the general city law (as repealed pursuant to chapter 5 of the laws of 1999) and administered by such commissioner.

(b) Such amnesty program shall apply to tax liabilities for the taxes set forth in subdivision (a) of this section ("designated taxes") for taxable periods ending or transactions or uses occurring on or before December 31, 2009, except that with respect to tax liabilities arising under any section or article of the tax law set forth in subdivision (a) of this section, which requires the filing of a return quarterly for the quarterly periods ending on the last day of February, May, August and November of each year, such amnesty program shall apply to such tax liabilities for taxable periods ending or transactions or uses occurring

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

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on or before February 28, 2010. Furthermore, with respect to tax liabilities arising under any article of the tax law, set forth in subdivision (a) of this section, which provides for the filing of an annual return on the last day of February each year, such amnesty program shall apply to such tax liabilities for transactions or uses occurring on or before February 28, 2010. Provided further, such amnesty program shall apply with respect to tax liabilities arising under article 26 of the tax law to estates of decedents dying on or before February 1, 2009.

(c) For purposes of the amnesty program established under this act, an eligible taxpayer is an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person as described in the tax law, who or which has a tax liability with regard to one or more of the designated taxes for the period of time described in subdivision (b) of this section.

(d) The amnesty program established herein shall provide, that upon application, including applicable returns, which application and returns shall be in such form and submitted in such manner as prescribed by the commissioner of taxation and finance, by an eligible taxpayer, and upon payment in such form and in such manner as prescribed by such commissioner, which payment shall either accompany such application or be made within the time stated on a bill issued by such commissioner to such taxpayer, of the amount of a tax liability under one or more of the designated taxes with respect to which amnesty is sought, plus related interest, such commissioner shall waive any applicable penalties (including the additional rate of interest prescribed under section 1145 of the tax law, referred to herein as "interest penalty") and shall reduce by two percent the applicable rate of interest associated with such liability, for the following: (i) for failure to pay any such tax liability; (ii) for failure to file a return or report with respect to any such tax liability; and (iii) for failure to pay estimated tax with respect to tax imposed under article 22 of the tax law, a designated tax imposed under article 9 of the tax law, a tax imposed under article 9-A of the tax law or a tax imposed pursuant to the authority of article 30, 30-A or 30-B of the tax law or former article 2-E of the general city law. In addition, no civil, administrative or criminal action or proceeding shall be brought against such an eligible taxpayer relating to the tax liability covered by such waiver. Failure to pay all such taxes, plus related interest by the later of March 15, 2012, or the date prescribed therefor on a bill issued by such commissioner, shall invalidate any amnesty granted pursuant to the amnesty program established under this act.

(e) Amnesty shall not be granted to a taxpayer, where such taxpayer received any benefit under the amnesty program established either under chapter 170 of the laws of 1994 or chapter 309 of the laws of 1996, with regard to the tax with respect to which such benefit was received under any such prior amnesty program.

(f) Amnesty shall not be granted to a taxpayer who is a party to any criminal investigation being conducted by an agency of the state or any political subdivision thereof, is a party to any administrative proceeding or civil or criminal litigation which is pending on the date of the taxpayer's application in the bureau of conciliation and mediation services, the division of tax appeals or any court of this state or the United States, relating to any action or failure to act which is the basis for the penalty or interest with respect to which amnesty is sought. Amnesty shall also not be granted to any taxpayer who has been

convicted of a crime relating to a tax that is the basis of the penalty or interest with respect to which amnesty is sought for any period or assessment for that tax. An administrative proceeding or civil litigation shall be deemed not to be pending on the date of the application if the taxpayer withdraws from such proceeding or litigation prior to the granting of amnesty.

(g) Amnesty shall not be granted to a taxpayer, where such taxpayer received any benefit under the New York state penalty and interest discount program.

(h) Amnesty tax return forms shall be in a form, contain such information and be submitted as prescribed by the commissioner of taxation and finance and shall provide for specifications by the applicant of the tax liability with respect to which amnesty is sought. The applicant must also provide such additional information as is required by such commissioner. Amnesty shall be granted only with respect to the tax liabilities specified by the taxpayer on such forms. Any return or report filed under the amnesty program established herein is subject to verification and assessment as provided by statute. If the applicant files a false or fraudulent tax return or report, or attempts in any manner to defeat or evade a tax under the amnesty program, amnesty shall be denied or rescinded.

(i) No refund shall be granted or credit allowed with respect to any penalty or interest paid prior to the time the taxpayer applies for amnesty pursuant to subdivision (d) of this section.

(j) Unless the commissioner of taxation and finance on his or her own motion redetermines the amount of tax due, including applicable interest, no refund shall be granted or credit allowed with respect to any taxes, including applicable interest, paid under this program.

(k) With respect to any existing installment payment agreement of an eligible taxpayer, where such agreement applies to a tax liability with respect to which amnesty is sought by such taxpayer, notwithstanding any terms of such agreement to the contrary, such taxpayer, as a condition of receiving amnesty, must pay any such liability in full by the later of the last day of the prescribed amnesty period, or the date prescribed therefor on a bill issued by the commissioner of taxation and finance.

(l) There shall be imposed a five percent penalty, which shall not be subject to waiver or abatement, in addition to all other penalties, in trust, or costs of collection otherwise authorized by law, upon any state tax liabilities eligible to be satisfied during the amnesty period that are not satisfied during such period.

(m) The commissioner of taxation and finance may promulgate regulations, issue forms and instructions and take any and all other actions necessary to implement the provisions of the amnesty program established under this act. Such commissioner shall publicize the amnesty program provided for herein so as to maximize public awareness of and participation in such program.

(n) For purposes of this section the term "taxpayer" shall include any person subject to any tax set forth in subdivision (a) of this section or any person required to collect any such tax. With respect to any designated tax imposed under article 9 of the tax law, and with respect to any tax imposed under article 9-A, 13-A, 22 or 28 of the tax law or former article 16-A, 18-A or 23 of the tax law or authorized by article 29, 30, 30-A or 30-B of the tax law or former article 2-E of the general city law, the amnesty program provided for herein shall not apply to a taxpayer which has more than five hundred employees or whose combined filing group has more than five hundred employees in the United States

on the date of the taxpayer's application. The term "penalty" shall not include the penalty imposed under subsection (g) of section 685 of the tax law, the penalty imposed under subdivision 2 of section 289-b of the tax law and the penalty imposed under subdivision (a) of section 315 of the tax law by reason of its incorporation by reference of such penalty imposed under subdivision 2 of section 289-b of the tax law.

(o) For purposes of this section, the amnesty tax return forms and other documents filed by taxpayers pursuant to the amnesty program established pursuant to this act shall be deemed to be reports and returns: (i) subject to the secrecy provisions in the same manner and to the same extent as if such reports or returns were referred to in subsection (e) of section 697 of the tax law, and (ii) for purposes of the criminal provisions of article 37 of the tax law.

(p) Section 266 of chapter 309 of the laws of 1996 providing for an augmentation in the amount of penalty due is repealed and shall no longer apply, except in the circumstances in which a penalty has been augmented pursuant to such section 266 as of the effective date of this act.

S 2. For purposes of accounting for the moneys and revenues received under the amnesty program established pursuant to this act, the commissioner of taxation and finance shall report the gross revenue collected under each tax pursuant to the tax amnesty program. Such report shall be on a monthly basis, commencing the first month after the amnesty program is established and ending with the last month ending immediately prior to the issuance of the final report required pursuant to this act. Such reports shall include information concerning the gross revenue collected under each tax.

S 3. On or before February 28, 2013, the commissioner of taxation and finance shall submit a report to the chairman of the assembly ways and means committee, the ranking minority member of the assembly ways and means committee, the chairman of the senate finance committee, the ranking minority member of the senate finance committee and the director of the division of the budget regarding the amnesty program established pursuant to this act. The report shall contain the following information as of the report cutoff date: (i) the number of cases by tax area in which requests for penalty and interest penalty waivers were made; (ii) the number of cases by tax area in which requests for penalty and interest penalty waivers were approved; (iii) the amount of tax and interest due in all approved and unapproved cases by tax area and the amount of penalty for unapproved cases by tax area, but not including interest on penalty; (iv) the amount of penalty and interest penalty waived in all approved cases by tax area but not including interest on penalty; (v) the gross revenue collected under each tax and the year or other applicable period for or during which the liability was incurred; (vi) the amount of money spent on advertising, notification, and outreach activities, by each activity, and a description of the form and content of such activities, by each activity; (vii) the amount paid by the department of taxation and finance for services and expenses related to the establishment of the amnesty program; (viii) an estimate of the amount of revenue foregone as a result of diverting staff of the department of taxation and finance from regular work responsibilities to work on the amnesty program; (ix) an estimate of the amount of revenue received during the period of the amnesty program provided for herein which would have otherwise been received during another period; and (x) an estimate of the net revenue generated from the amnesty program.

S 4. This act shall take effect immediately.