

5945

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:

1 Section 1. (a) Notwithstanding the provisions of any other law to the
2 contrary, there is hereby established an amnesty program as described
3 herein, to be administered by the commissioner of taxation and finance,
4 to be effective for the period as prescribed by such commissioner, for
5 all eligible taxpayers as described herein, owing any tax or surcharge
6 imposed or formerly imposed by section 182, 182-a, 182-b (as repealed by
7 chapter 400 of the laws of 1983), 183, 183-a, 184, 184-a, 186 (as
8 repealed by chapter 63 of the laws of 2000), 186-b (as repealed by chap-
9 ter 63 of the laws of 2000), 186-e, 189 (as repealed by chapter 63 of
10 the laws of 2000), 189-a (as repealed by chapter 63 of the laws of 2000)
11 or 189-b of article 9, or article 9-A, 12-A, 13, 13-A, 16 (as repealed
12 by chapter 267 of the laws of 1987), 16-A (as repealed by chapter 267 of
13 the laws of 1987), 18-A (as repealed by chapter 389 of the laws of
14 1997), 21, 22, 23 (as repealed by chapter 69 of the laws of 1978), 24
15 (as repealed by chapter 170 of the laws of 1994), 26, 26-A (as repealed
16 by chapter 389 of the laws of 1997), 26-B, 28, 28-A, 31-B (as repealed
17 by chapter 309 of the laws of 1996) or 33-A of the tax law, or author-
18 ized by article 12-A, 29, 30, 30-A or 30-B of the tax law or article 2-E
19 of the general city law (as repealed pursuant to chapter 5 of the laws
20 of 1999) and administered by such commissioner.

21 (b) Such amnesty program shall apply to tax liabilities for the taxes
22 set forth in subdivision (a) of this section ("designated taxes") for
23 taxable periods ending or transactions or uses occurring on or before
24 December 31, 2009, except that with respect to tax liabilities arising
25 under any section or article of the tax law set forth in subdivision (a)
26 of this section, which requires the filing of a return quarterly for the
27 quarterly periods ending on the last day of February, May, August and
28 November of each year, such amnesty program shall apply to such tax
29 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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1 on or before February 28, 2010. Furthermore, with respect to tax liabil-
2 ities arising under any article of the tax law, set forth in subdivision
3 (a) of this section, which provides for the filing of an annual return
4 on the last day of February each year, such amnesty program shall apply
5 to such tax liabilities for transactions or uses occurring on or before
6 February 28, 2010. Provided further, such amnesty program shall apply
7 with respect to tax liabilities arising under article 26 of the tax law
8 to estates of decedents dying on or before February 1, 2009.

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

16 (d) The amnesty program established herein shall provide, that upon
17 application, including applicable returns, which application and returns
18 shall be in such form and submitted in such manner as prescribed by the
19 commissioner of taxation and finance, by an eligible taxpayer, and upon
20 payment in such form and in such manner as prescribed by such commis-
21 sioner, which payment shall either accompany such application or be made
22 within the time stated on a bill issued by such commissioner to such
23 taxpayer, of the amount of a tax liability under one or more of the
24 designated taxes with respect to which amnesty is sought, plus related
25 interest, such commissioner shall waive any applicable penalties
26 (including the additional rate of interest prescribed under section 1145
27 of the tax law, referred to herein as "interest penalty") and shall
28 reduce by two percent the applicable rate of interest associated with
29 such liability, for the following: (i) for failure to pay any such tax
30 liability; (ii) for failure to file a return or report with respect to
31 any such tax liability; and (iii) for failure to pay estimated tax with
32 respect to tax imposed under article 22 of the tax law, a designated tax
33 imposed under article 9 of the tax law, a tax imposed under article 9-A
34 of the tax law or a tax imposed pursuant to the authority of article 30,
35 30-A or 30-B of the tax law or former article 2-E of the general city
36 law. In addition, no civil, administrative or criminal action or
37 proceeding shall be brought against such an eligible taxpayer relating
38 to the tax liability covered by such waiver. Failure to pay all such
39 taxes, plus related interest by the later of March 15, 2012, or the date
40 prescribed therefor on a bill issued by such commissioner, shall invali-
41 date any amnesty granted pursuant to the amnesty program established
42 under this act.

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

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

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

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

10 (h) Amnesty tax return forms shall be in a form, contain such informa-
11 tion and be submitted as prescribed by the commissioner of taxation and
12 finance and shall provide for specifications by the applicant of the tax
13 liability with respect to which amnesty is sought. The applicant must
14 also provide such additional information as is required by such commis-
15 sioner. Amnesty shall be granted only with respect to the tax liabil-
16 ities specified by the taxpayer on such forms. Any return or report
17 filed under the amnesty program established herein is subject to verifi-
18 cation and assessment as provided by statute. If the applicant files a
19 false or fraudulent tax return or report, or attempts in any manner to
20 defeat or evade a tax under the amnesty program, amnesty shall be denied
21 or rescinded.

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

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

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

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

41 (m) The commissioner of taxation and finance may promulgate regu-
42 lations, issue forms and instructions and take any and all other actions
43 necessary to implement the provisions of the amnesty program established
44 under this act. Such commissioner shall publicize the amnesty program
45 provided for herein so as to maximize public awareness of and partic-
46 ipation in such program.

47 (n) For purposes of this section the term "taxpayer" shall include any
48 person subject to any tax set forth in subdivision (a) of this section
49 or any person required to collect any such tax. With respect to any
50 designated tax imposed under article 9 of the tax law, and with respect
51 to any tax imposed under article 9-A, 13-A, 22 or 28 of the tax law or
52 former article 16-A, 18-A or 23 of the tax law or authorized by article
53 29, 30, 30-A or 30-B of the tax law or former article 2-E of the general
54 city law, the amnesty program provided for herein shall not apply to a
55 taxpayer which has more than five hundred employees or whose combined
56 filing group has more than five hundred employees in the United States

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

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

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

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

28 S 3. On or before February 28, 2013, the commissioner of taxation and
29 finance shall submit a report to the chairman of the assembly ways and
30 means committee, the ranking minority member of the assembly ways and
31 means committee, the chairman of the senate finance committee, the rank-
32 ing minority member of the senate finance committee and the director of
33 the division of the budget regarding the amnesty program established
34 pursuant to this act. The report shall contain the following information
35 as of the report cutoff date: (i) the number of cases by tax area in
36 which requests for penalty and interest penalty waivers were made; (ii)
37 the number of cases by tax area in which requests for penalty and inter-
38 est penalty waivers were approved; (iii) the amount of tax and interest
39 due in all approved and unapproved cases by tax area and the amount of
40 penalty for unapproved cases by tax area, but not including interest on
41 penalty; (iv) the amount of penalty and interest penalty waived in all
42 approved cases by tax area but not including interest on penalty; (v)
43 the gross revenue collected under each tax and the year or other appli-
44 cable period for or during which the liability was incurred; (vi) the
45 amount of money spent on advertising, notification, and outreach activ-
46 ities, by each activity, and a description of the form and content of
47 such activities, by each activity; (vii) the amount paid by the depart-
48 ment of taxation and finance for services and expenses related to the
49 establishment of the amnesty program; (viii) an estimate of the amount
50 of revenue foregone as a result of diverting staff of the department of
51 taxation and finance from regular work responsibilities to work on the
52 amnesty program; (ix) an estimate of the amount of revenue received
53 during the period of the amnesty program provided for herein which would
54 have otherwise been received during another period; and (x) an estimate
55 of the net revenue generated from the amnesty program.

56 S 4. This act shall take effect immediately.