

6734

2011-2012 Regular Sessions

I N A S S E M B L Y

March 28, 2011

Introduced by M. of A. COLTON, P. RIVERA, CLARK, GALEF, ROBINSON,
ABINANTI, GIBSON, LATIMER, THIELE, SCHIMEL, MAISEL, BARRON, GUNTHER,
SCARBOROUGH -- Multi-Sponsored by -- M. of A. TOWNS -- 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6 imposed or formerly imposed by section 182, 182-a, 182-b (as repealed by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8 repealed by chapter 63 of the laws of 2000), 186-b (as repealed by chap-
9 ter 63 of the laws of 2000), 186-e, 189 (as repealed by chapter 63 of
10 the laws of 2000), 189-a (as repealed by chapter 63 of the laws of 2000)
11 or 189-b of article 9, or article 9-A, 12-A, 13, 13-A, 16 (as repealed
12 by chapter 267 of the laws of 1987), 16-A (as repealed by chapter 267 of
13 the laws of 1987), 18-A (as repealed by chapter 389 of the laws of
14 1997), 21, 22, 23 (as repealed by chapter 69 of the laws of 1978), 24
15 (as repealed by chapter 170 of the laws of 1994), 26, 26-A (as repealed
16 by chapter 389 of the laws of 1997), 26-B, 28, 28-A, 31-B (as repealed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19 of the general city law (as repealed pursuant to chapter 5 of the laws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

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

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1 under any section or article of the tax law set forth in subdivision (a)
2 of this section, which requires the filing of a return quarterly for the
3 quarterly periods ending on the last day of February, May, August and
4 November of each year, such amnesty program shall apply to such tax
5 liabilities for taxable periods ending or transactions or uses occurring
6 on or before February 28, 2010. Furthermore, with respect to tax liabil-
7 ities arising under any article of the tax law, set forth in subdivision
8 (a) of this section, which provides for the filing of an annual return
9 on the last day of February each year, such amnesty program shall apply
10 to such tax liabilities for transactions or uses occurring on or before
11 February 28, 2010. Provided further, such amnesty program shall apply
12 with respect to tax liabilities arising under article 26 of the tax law
13 to estates of decedents dying on or before February 1, 2009.

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

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

48 (e) Amnesty shall not be granted to a taxpayer, where such taxpayer
49 received any benefit under the amnesty program established either under
50 chapter 170 of the laws of 1994, chapter 309 of the laws of 1996 or
51 chapter 501 of the laws of 2009, with regard to the tax with respect to
52 which such benefit was received under any such prior amnesty program.

53 (f) Amnesty shall not be granted to a taxpayer who is a party to any
54 criminal investigation being conducted by an agency of the state or any
55 political subdivision thereof, is a party to any administrative proceed-
56 ing or civil or criminal litigation which is pending on the date of the

1 taxpayer's application in the bureau of conciliation and mediation
2 services, the division of tax appeals or any court of this state or the
3 United States, relating to any action or failure to act which is the
4 basis for the penalty or interest with respect to which amnesty is
5 sought. Amnesty shall also not be granted to any taxpayer who has been
6 convicted of a crime relating to a tax that is the basis of the penalty
7 or interest with respect to which amnesty is sought for any period or
8 assessment for that tax. An administrative proceeding or civil liti-
9 gation shall be deemed not to be pending on the date of the application
10 if the taxpayer withdraws from such proceeding or litigation prior to
11 the granting of amnesty.

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

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

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

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

38 (k) There shall be imposed a five percent penalty, which shall not be
39 subject to waiver or abatement, in addition to all other penalties, in
40 trust, or costs of collection otherwise authorized by law, upon any
41 state tax liabilities eligible to be satisfied during the amnesty period
42 that are not satisfied during such period. Provided, however, where
43 such taxpayer: (i) was ineligible to receive such a waiver due to pend-
44 ing civil litigation as described in subdivision (f) of this section or
45 (ii) prior to the expiration of the amnesty period prescribed by the
46 commissioner of taxation and finance, a taxpayer who entered into an
47 installment payment agreement with respect to such penalty and the
48 underlying tax liability, and does not apply for amnesty with respect to
49 the tax liability to which such agreement applies, such taxpayer shall
50 not be subject to such augmentation of penalty.

51 (l) The commissioner of taxation and finance may promulgate regu-
52 lations, issue forms and instructions and take any and all other actions
53 necessary to implement the provisions of the amnesty program established
54 under this act. Such commissioner shall publicize the amnesty program
55 provided for herein so as to maximize public awareness of and partic-
56 ipation in such program.

1 (m) For purposes of this section the term "taxpayer" shall include any
2 person subject to any tax set forth in subdivision (a) of this section
3 or any person required to collect any such tax. With respect to any
4 designated tax imposed under article 9 of the tax law, and with respect
5 to any tax imposed under article 9-A, 13-A, 22 or 28 of the tax law or
6 former article 16-A, 18-A or 23 of the tax law or authorized by article
7 29, 30, 30-A or 30-B of the tax law or former article 2-E of the general
8 city law, the amnesty program provided for herein shall not apply to a
9 taxpayer which has more than five hundred employees or whose combined
10 filing group has more than five hundred employees in the United States
11 on the date of the taxpayer's application. The term "penalty" shall not
12 include the penalty imposed under subsection (g) of section 685 of the
13 tax law, the penalty imposed under subdivision 2 of section 289-b of the
14 tax law and the penalty imposed under subdivision (a) of section 315 of
15 the tax law by reason of its incorporation by reference of such penalty
16 imposed under subdivision 2 of section 289-b of the tax law.

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

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

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

1 amnesty program; (ix) an estimate of the amount of revenue received
2 during the period of the amnesty program provided for herein which would
3 have otherwise been received during another period; and (x) an estimate
4 of the net revenue generated from the amnesty program.

5 S 4. This act shall take effect immediately.