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

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2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

Introduced by M. of A. CAHILL, ABINANTI, GUNTHER, SCHIMMINGER, JAFFEE, CASTRO, MILLMAN, ZEBROWSKI, GIBSON, CRESPO, ROBERTS, ROSENTHAL, WEPRIN -- Multi-Sponsored by -- M. of A. ARROYO, BRAUNSTEIN, BRENNAN, DUPREY, FINCH, GLICK, GOODELL, GOTTFRIED, JORDAN, LUPARDO, MAGEE, McDONOUGH, McLAUGHLIN, O'DONNELL, RAIA, SALADINO, SCHIMEL, SWEENEY -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to repealing penalties for failure to electronically file or electronically pay certain tax documents

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

Section 1. Subdivision (e) of section 29 of the tax law as amended by section 13 of part U of chapter 61 of the laws of 2011, paragraph 2 as amended by section 4 and paragraph 4 as amended by section 5 of part G of chapter 59 of the laws of 2012, is amended to read as follows:

(e) Failure to electronically file or electronically pay. [(1) If a tax return preparer is required to file authorized tax documents electronically pursuant to subdivision (b) of this section, and that preparer fails to file one or more of those documents electronically, then that preparer will be subject to a penalty of fifty dollars for each failure to electronically file an authorized tax document, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) If a taxpayer is required to electronically file any authorized tax documents or electronically pay any tax liability or other amount due shown on, or required to be paid with, an authorized tax document required to be filed electronically pursuant to subdivision (b) or (c) of this section, and that taxpayer fails to electronically file one or more of those tax documents or electronically pay one or more of those liabilities or other amounts due, then that taxpayer will be subject to a penalty of fifty dollars for each failure to electronically file any

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

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authorized tax document or electronically pay any tax, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. In addition, any taxpayer that fails to electronically file an authorized tax document for any tax will be subject to the penalty imposed under the applicable article for the failure to file a return or report, whether a paper return or report has been filed or not. Provided, however, that this subdivision shall not apply to an individual taxpayer with respect to his or her personal tax documents that are required by or pursuant to the authority of article twenty-two, thirty, thirty-A or thirty-B of this chapter.

(3) The penalties provided for by this subdivision must be paid upon notice and demand, and will be assessed, collected and paid in the same manner as the tax to which the electronic transaction relates. However, if the electronic transaction relates to another matter administered by the commissioner, then the penalty will be assessed, collected and paid in the same manner as prescribed by article twenty-seven of this chapter.

(4) If a taxpayer or tax return preparer fails to electronically file an authorized tax document when required to do so pursuant to subdivision (b) or (c) of this section, the taxpayer shall not be eligible to receive interest on any overpayment in accordance with the overpayment provisions of this chapter until such document is filed electronically. Provided, however, that this subdivision shall not apply to an individual taxpayer with respect to his or her personal tax documents that are required by or pursuant to the authority of article twenty-two, thirty, thirty-A or thirty-B of this chapter] NEITHER TAX RETURN PREPARERS NOR TAXPAYERS SHALL BE SUBJECT TO ANY PENALTIES FOR THEIR FAILURE TO ELECTRONICALLY FILE OR ELECTRONICALLY PAY PURSUANT TO THIS SECTION.

S 2. Subdivision (e) of section 29 of the tax law, as added by section 1 of part UU-1 of chapter 57 of the laws of 2008 and paragraph 1 as amended by section 1 of part G of chapter 57 of the laws of 2010, is amended to read as follows:

(e) Failure to electronically file or electronically pay. [(1) If a tax return preparer is required to file authorized tax documents electronically pursuant to subdivision (b) of this section, and that preparer fails to file one or more of those documents electronically, then that preparer will be subject to a penalty of fifty dollars for each failure to electronically file an authorized tax document, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) If a taxpayer is required to electronically pay any tax liability or other amount due shown on, or required to be paid with, an authorized tax document required to be filed electronically pursuant to subdivision (b) or (c) of this section, and that taxpayer fails to electronically pay one or more of those liabilities or other amounts due, then that taxpayer will be subject to a penalty of fifty dollars for each failure to electronically pay.

(3) The penalties provided for by this subdivision must be paid upon notice and demand, and will be assessed, collected and paid in the same manner as the tax to which the electronic transaction relates. However, if the electronic transaction relates to another matter administered by the commissioner, then the penally will be assessed, collected and paid in the same manner as prescribed by article twenty-seven of this chapter] NEITHER TAX RETURN PREPARERS NOR TAXPAYERS SHALL BE SUBJECT TO ANY PENALTIES FOR THEIR FAILURE TO ELECTRONICALLY FILE OR ELECTRONICALLY PAY PURSUANT TO THIS SECTION.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however that the amendments to subdivision (e) of section 29 of the tax law made by section one of this act shall be subject to the expiration and reversion of such section pursuant to section 23 of part U of chapter 61 of the laws of 2011, as amended, when upon such date the provisions of section two of this act shall take effect. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such date.