# STATE OF NEW YORK

4722--A

2017-2018 Regular Sessions

# IN SENATE

February 24, 2017

Introduced by Sen. LATIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to decreasing interest due on underpayment of tax or erroneous refunds relating to personal income tax and sales and compensating use taxes

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Subsections (a) and (j) of section 684 of the tax law, as amended by section 2 of subpart D of part V-1 of chapter 57 of the laws of 2009, are amended to read as follows:

(a) General.--If any amount of income tax is not paid on or before the last date prescribed in this article for payment, interest on such amount at the underpayment rate set [~~by the commissioner pursuant to section six hundred ninety-seven of this part, or if no rate is set,~~] at the rate of [~~seven and one-half~~] three percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subsection shall not be paid if the amount thereof is less than one [~~dollar~~] hundred dollars. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(j) Interest on erroneous refund.--Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner, shall bear interest at the underpayment rate set [~~by the commissioner pursuant to section six hundred ninety-seven of this part, or if no rate is set,~~] at the rate of [~~seven and one-half~~] three percent per annum from the date of the payment of the refund, but only if it

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

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appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

§ 2. Subparagraphs (i), (ii) and (vi) of paragraph 1 of subdivision (a) of section 1145 of the tax law, subparagraph (i) as amended by chapter 411 of the laws of 1986, subparagraph (ii) as amended by section 12 of subpart D of part V-1 of chapter 57 of the laws of 2009 and subparagraph (vi) as amended by chapter 65 of the laws of 1985, are amended to read as follows:

(i) Any person failing to file a return or to pay or pay over any tax to the tax commission within the time required by or pursuant to this article (determined with regard to any extension of time for filing or paying) shall be subject to a penalty of [~~ten~~] **five** percent of the amount of tax due if such failure is for not more than one month, with an additional [~~one~~] **one-half** percent for each additional month or fraction thereof during which such failure continues, not exceeding thirty percent in the aggregate. Provided, however, in the case of a failure to file such return within sixty days of the date prescribed for filing of such return by or pursuant to this article (determined with regard to any extension of time for filing), the penalty imposed by this subparagraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return. For the purpose of the preceding sentence, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. In the case of a failure to file a return by a person required to register with the tax commission as provided in section eleven hundred thirty-four, in no event shall the penalty for failure to file a return be less than fifty dollars.

(ii) If any amount of tax is not paid on or before the last date prescribed in this article for payment, interest on such amount at the rate of [~~fourteen and one-half~~] **seven and one-quarter** percent per annum or at the underpayment rate set by the commissioner pursuant to section eleven hundred forty-two of this part, whichever is greater, shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subparagraph shall not be paid if the amount thereof is less than one dollar.

(vi) Any person required by this article to file a return, who omits from the total amount of state and local sales and compensating use taxes required to be shown on a return an amount which is in excess of twenty-five percent of the amount of such taxes required to be shown on the return shall be subject to a penalty equal to [~~ten~~] **five** percent of the amount of such omission. The amount of the omission under the preceding sentence shall be reduced by that portion of the omission which is attributable to the tax treatment of any item by such person if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. If the tax commission determines that such omission was due to reasonable cause and not due to willful neglect, it shall remit all of such penalty. The penalty provided for in this subparagraph shall not apply to any return of estimated tax required to be filed under section eleven hundred thirty-seven-A.

§ 3. This act shall take effect immediately and shall apply to all tax years commencing on and after January 1, 2018.