

ASSEMBLY, No. 2140

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED FEBRUARY 9, 2004

Sponsored by:

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblywoman JOAN M. QUIGLEY

District 32 (Bergen and Hudson)

SYNOPSIS

Provides New Jersey sales tax amnesty program for small business.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/14/2004)

A2140 PRIETO, QUIGLEY

2

1 AN ACT providing for a tax amnesty period for certain collectors of
2 sales taxes, supplementing Title 54 of the Revised Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. a. In addition to the powers of the Director of the Division of
8 Taxation in the Department of the Treasury prescribed under the State
9 Tax Uniform Procedure Law, R.S.54:48-1 et seq., and
10 notwithstanding the provisions of section 4 of P.L.1996, c.2 (C.54:53-
11 17) or any other law to the contrary, the director shall establish a
12 period of three calendar months in duration, which period shall end no
13 later than one year after the date of enactment of this act, during which
14 a "person required to collect tax," as defined pursuant to section 2 of
15 P.L.1966, c.30 (C.54:32B-2), having 50 employees or fewer, or \$5
16 million or less in gross revenue, and that has failed to pay to the
17 director the taxes imposed by the "Sales and Use Tax Act," P.L.1966,
18 c.30 (C.54:32B-1 et seq.) may pay, or enter into an agreement to pay
19 pursuant to the requirements of subsection b. of this section, to the
20 director the amount of that tax, without any interest that may
21 otherwise be due, without any costs of collection that may otherwise
22 be due, and without the imposition of any civil or criminal penalties
23 arising out of an obligation imposed under any State tax law.
24 Provided, that this section shall apply only to State tax liabilities for
25 tax returns due on or after January 1, 1987 and before January 1, 2000
26 and that this section shall not extend to any person required to collect
27 tax that at the time of the payment is under criminal investigation or
28 charge for any State tax matter, as certified by a county prosecutor or
29 the Attorney General to the director.

30 b. A person required to collect tax shall be allowed to enter into a
31 written agreement with the director to make installment payments of
32 the amount of that tax. An installment agreement shall be entered into
33 during the amnesty period and accompanied by the first payment
34 required under the agreement. Such an agreement shall provide that
35 payments shall be made monthly over a period not to exceed five
36 years, under a payment schedule of equal or decreasing installments.
37 Each installment payment shall comprise a payment reducing the
38 amount of that tax owed and a payment of the interest on the balance
39 of the amount of that tax owed. The interest on the balance of the
40 amount of that tax owed shall be calculated at a rate equal to the
41 interest rate on deficiencies determined pursuant to R.S.54:49-6 for
42 the calendar quarter in which the agreement was made. A person shall
43 be allowed to make payments in excess of a scheduled installment at
44 the time that the scheduled installment is due; such an excess payment
45 shall be first applied to reduce the amount of that tax owed on the last
46 remaining scheduled installment. No installment agreement shall be

1 entered by the director unless the taxpayer waives the running of the
2 statutory period of limitations on both assessment or collection of the
3 tax liability involved for the period during which any installment
4 remains unpaid, and for one year thereafter.

5 c. There shall be imposed a 5% penalty, which shall not be subject
6 to waiver or abatement, in addition to all other penalties, interest, or
7 costs of collection otherwise authorized by law, upon any State tax
8 liabilities eligible to be satisfied during the period established pursuant
9 to subsection a. of this section that are not otherwise subject to the 5%
10 penalty imposed by section 4 of P.L.1996, c.2 (C.54:53-17) and that
11 are not satisfied during the amnesty period.

12 d. Notwithstanding the provisions of any other law to the contrary,
13 if a taxpayer elects to participate in the program established pursuant
14 to this section, as that election shall be evidenced by full payment
15 pursuant to this section of a State tax liability to which this section
16 applies pursuant to subsection a. of this section or as that election shall
17 be evidenced by payment of a deposit pursuant to subsection b. of this
18 section, then that election shall constitute an express and absolute
19 relinquishment of all administrative and judicial rights of appeal that
20 have not run or otherwise expired as of the date payment is made. The
21 relinquishment of rights of appeal pursuant to this subsection shall
22 apply with respect to all rights of appeal established pursuant to the
23 State Tax Uniform Procedure Law, R.S.54:48-1 et seq., and the
24 specific statutory provisions of the "Sales and Use Tax Act,"
25 P.L.1966, c.30 (C.54:32B-1 et seq.). No tax payment made pursuant
26 to this section shall be eligible for refund or credit, whether claimed by
27 administrative protest or judicial appeal, except as may be permitted
28 pursuant to R.S.54:49-16.

29 e. Notwithstanding the provisions of any other law to the contrary,
30 no amnesty payment shall be accepted without the express approval of
31 the director with respect to any State tax assessment which is the
32 subject of any administrative or judicial appeal as of the effective date
33 of this act.

34 f. Notwithstanding the provisions of any other law to the contrary,
35 no taxpayer shall be entitled to the waiver of penalty, interest and cost
36 of collection set forth in subsection a. of this section unless full
37 payment of the tax due is made in accordance with the rules and
38 procedures established by the director or unless all payments required
39 under an installment plan pursuant to subsection b. are made.

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41 2. This act shall take effect immediately.

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44 STATEMENT

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46 This bill requires the Director of the Division of Taxation to offer

1 a sales tax amnesty program to small businesses, which would include
2 installment plans for the payment of the sales tax liability.

3 This bill requires that there be a 90 day period within the 12 months
4 after the enactment of the bill during which a "person required to
5 collect the sales tax" can pay, or begin to pay, the tax without any
6 interest that may otherwise be due, without any costs of collection that
7 may otherwise be due, and without the imposition of any civil or
8 criminal penalties arising out of an obligation imposed under the New
9 Jersey sales and use tax.

10 Unlike previous amnesty programs, the bill is directed at small
11 businesses and its program allows taxpayers to pay their liabilities over
12 time. The bill applies to all businesses that have 50 or fewer
13 employees, or \$5 million or less in gross revenue, and that are required
14 to collect sales taxes. A taxpayer can receive amnesty by paying past
15 due liabilities in full during the amnesty period or by beginning
16 payments under an installment agreement. The installment payments
17 must be completed within five years and must be made monthly.
18 During the term of the payment plan, the unpaid balance of the liability
19 will be charged interest at the deficiency interest rate of the prime rate
20 plus 3%, which also must be paid as part of the installments.

21 If a taxpayer eligible to pay taxes as part of the amnesty program
22 fails to pay taxes due during the period, fails to enter into an
23 installment agreement or fails to make payments under an agreement,
24 a 5% penalty will be imposed in addition to all other penalties,
25 interest, or costs of collection otherwise authorized by law, on the
26 unpaid liability. The amnesty provisions do not extend to any taxpayer
27 under criminal investigation or charge for any State tax matter.

28 The amnesty program provided by this bill applies to New Jersey
29 sales tax liabilities for tax returns due on and after January 1, 1987 and
30 before January 1, 2000. The State offered a tax amnesty program in
31 1996 that applied to some of the same return periods and taxpayers,
32 but that amnesty program required the payment of the full amount of
33 taxes within its 90-day period. Small businesses that were unable to
34 make full payment within that period were not able to take advantage
35 of that program. The program provided by this bill addresses the cash-
36 flow and credit problems faced by small retail businesses.