

# SENATE, No. 3122

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED AUGUST 10, 2015

**Sponsored by:**

**Senator ANTHONY R. BUCCO**

**District 25 (Morris and Somerset)**

**SYNOPSIS**

Permits State tax debt forgiveness for taxpayers experiencing undue economic hardship.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT permitting State tax debt forgiveness for undue economic  
2 hardship, amending various sections of the statutory law.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. R.S.54:48-2 is amended to read as follows:

8 54:48-2. As used in this subtitle:

9 "Basic living expense" means an expense that provides for the  
10 health, welfare, or production of income of the individual taxpayer  
11 or the individual taxpayer's family.

12 "Commissioner" means the Director of the Division of Taxation  
13 in the Department of the Treasury.

14 "Department" means the Division of Taxation in the Department  
15 of the Treasury.

16 "Director" means the Director of the Division of Taxation.

17 "Prime rate" means the average predominant prime rate, as  
18 determined by the Board of Governors of the Federal Reserve  
19 System, quoted by commercial banks to large businesses as of the  
20 first business day of the calendar quarter within which the payment  
21 was due; except that as to the calculation of interest accruing on and  
22 after the July 1 next following enactment of P.L.1992, c.175 "prime  
23 rate" means that rate quoted as of December 1 of the calendar year  
24 immediately preceding the calendar year in which the payment was  
25 due, provided however, that if the director determines that the prime  
26 rate quoted by commercial banks to large businesses varies by more  
27 than one percentage point from the rate otherwise determined, the  
28 director shall redetermine the prime rate to be that quoted prime  
29 rate for subsequent calendar quarters of the calendar year in which  
30 payments become due.

31 "State tax" means any tax which is payable to or collectible by  
32 the director, and "State tax law" means any law which levies or  
33 imposes a State tax as herein defined.

34 "Taxpayer" means any person owing or liable to pay any State  
35 tax or any person deemed by the director to be so owing or liable.

36 "Tax preparer" means any person who prepares for  
37 compensation, or who employs one or more persons to prepare for  
38 compensation, any return of tax or claim for refund under any State  
39 tax law.

40 "Undue economic hardship" means an individual taxpayer's  
41 inability to pay reasonable basic living expenses as determined by  
42 the director. The director's determination shall be based on the cost  
43 of basic living expenses relative to a taxpayer's financial condition  
44 with attention to the taxpayer's: age, health, employment status,  
45 employment history, and income earning capacity; dependents'

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 number, age, and health; residential area's cost of living;  
2 extraordinary circumstances, including, but not limited to, medical  
3 catastrophes, natural disasters, or special education expenses; and  
4 any other fact that the taxpayer claims which the director finds  
5 relevant to a determination of undue economic hardship.

6 (cf: P.L.2006, c.36, s.1)

7  
8 2. R.S.54:49-11 is amended to read as follows:

9 54:49-11. a. If the failure to pay any such tax when due is  
10 explained to the satisfaction of the director, he may remit or waive  
11 the payment of the whole or any part of any penalty and may remit  
12 or waive the payment of any interest charge in excess of the rate of  
13 three percentage points above the prime rate including any such  
14 penalty or interest with respect to deficiency assessments made  
15 pursuant to R.S.54:49-6.

16 b. The director shall waive the payment of any part of any  
17 penalty or any part of any interest attributable to the taxpayer's  
18 reasonable reliance on erroneous advice furnished to the taxpayer in  
19 writing by an employee of the Division of Taxation acting in the  
20 employee's official capacity, provided that the penalty or interest  
21 did not result from a failure of the taxpayer to provide adequate or  
22 accurate information.

23 c. On or after January 1, 2016, the director may also waive or  
24 remit the payment of penalties and interest, in whole or in part, if  
25 imposing the penalties and interest would cause an individual  
26 taxpayer an undue economic hardship as defined by R.S.54:48-2.

27 (P.L.1992, c.175, s.4)

28  
29 3. Section 7 of P.L.1975, c.387 (C.54:53-7) is amended to read  
30 as follows:

31 7. a. The Director of the Division of Taxation may  
32 compromise criminal liabilities and any civil liability arising under  
33 the tax laws of the State.

34 Generally, compromise agreements associated with criminal or  
35 civil liability arising under tax laws of the State may be entered into  
36 prior to reference of a case involving such liability to the Attorney  
37 General for prosecution or defense. Any such liability may be  
38 compromised only upon one or both of the following grounds:

39 (1) Doubt as to liability; or

40 (2) Doubt as to collectability.

41 No such liability shall be compromised if the liability has been  
42 established by a court of competent jurisdiction or is certain, and  
43 there is no reasonable doubt as to the ability of the State to collect  
44 the amounts owing with respect to such liability.

45 However, on or after January 1, 2016, for cases filed with the  
46 Tax Court the director may also enter into compromise agreements  
47 for any criminal or civil liability arising under tax laws of the State  
48 if imposing the liabilities would cause the individual taxpayer an

1 undue economic hardship as defined by R.S.54:48-2. The director's  
2 undue economic hardship compromise agreement authority shall  
3 apply without respect to a case's reference to the Attorney General,  
4 the establishment of the liability by a court of competent  
5 jurisdiction, or the certainty of the liability.

6 b. The Director of the Division of Taxation may compromise  
7 the time for payment of a liability arising under the tax laws of the  
8 State pursuant to paragraphs (1) or (2) of this subsection.

9 (1) The time for payment of a liability shall be compromised  
10 under this **【subsection】** paragraph only on the grounds that the  
11 equities of the taxpayer's liability indicate that a compromise would  
12 be in the interest of the State and that without such a compromise  
13 the taxpayer would experience extreme financial hardship

14 (2) For payments scheduled on or after January 1, 2016, the  
15 director may also compromise the timing for payment under this  
16 paragraph if maintaining the previously scheduled time of payment  
17 would cause an individual taxpayer an undue economic hardship as  
18 defined by R.S.54:48-2.

19 **【A】** c. Generally, a delayed payment or installment payment  
20 compromise agreement entered into pursuant to this section shall  
21 include interest on the unpaid balance of the liability at the rate of  
22 three percentage points above the prime rate. However, for delayed  
23 payments or installment payment compromise agreements allowed  
24 by the director on or after January 1, 2016, interest on unpaid  
25 balances may also be abated, in whole or in part, if the director  
26 determines that imposing interest would cause an individual  
27 taxpayer undue economic hardship as defined by R.S.54:48-2.

28 (cf: P.L.1992, c.175, s.17)

29  
30 4. Section 1 of P.L.1975, c.387 (C.54:53-1) is amended to read  
31 as follows:

32 1. The Director of the Division of Taxation is authorized to  
33 enter into a written agreement with any person relating to the  
34 liability of such person, or of the person or estate for whom he acts,  
35 in respect of any State tax for any taxable period ending prior or  
36 subsequent to the date of such agreement.

37 A closing agreement may be entered into in any case in which  
38 there appears to be an advantage in having the case permanently  
39 and conclusively closed, or if good and sufficient reasons are shown  
40 by the taxpayer for desiring a closing agreement and it is  
41 determined by the director that the State will sustain no  
42 disadvantage through consummation of such an agreement.

43 On or after January 1, 2016, the director may also enter into a  
44 closing agreement for any State tax liability with an individual  
45 taxpayer if collecting the liability would cause the taxpayer an  
46 undue economic hardship as defined by R.S.54:48-2.

47 (cf: P.L.1975, c. 387, s.1)

1       5. Section 4 of P.L.1975, c.387 (C.54:53-4) is amended to read  
2 as follows:

3       4. A closing agreement which is approved within such time as  
4 may be stated in such agreement, or later agreed to, shall be final  
5 and conclusive, and, except upon a showing of fraud or  
6 malfeasance, or misrepresentation of fact, or undue economic  
7 hardship as defined by R.S.54:48-2:

8       a. The case shall not be reopened as to the matters agreed upon  
9 or the agreement modified by any officer, employee or agent of the  
10 State of New Jersey, and;

11       b. In any suit, action or proceeding, such agreement,  
12 abatement, refund or credit made in accordance therewith, shall not  
13 be annulled, modified, set aside or disregarded; provided,  
14 however, a closing agreement with respect to a taxable period  
15 ending subsequent to the date of the agreement is subject to any  
16 change in, or modification of the law enacted subsequent to the date  
17 of such agreement and made applicable to such taxable period, and  
18 each closing agreement shall so state.

19 (cf: P.L.1975, c.387, s.4)  
20

21       6. Section 9 of P.L.1975, c.387 (C.54:53-9) is amended to read  
22 as follows:

23       9. A compromise agreement shall relate to the entire liability of  
24 the taxpayer (including taxes, ad valorem penalties and interest)  
25 with respect to which the offer in compromise is submitted and all  
26 questions of such liability are conclusively settled thereby. Specific  
27 penalties, however, shall be compromised separately and not in  
28 connection with taxes, interest or ad valorem penalties. Neither the  
29 taxpayer nor the State shall, upon the acceptance of an offer in  
30 compromise, be permitted to reopen the case except by reason of  
31 the following:

32       a. Falsification or concealment of assets by the taxpayer;

33       b. Mutual mistake of a material fact sufficient to cause a  
34 contract to be set aside; **[or]**

35       c. The significant change in the financial condition of a  
36 taxpayer with which the director has entered into an agreement  
37 under paragraph (1) of subsection b. of section 7 of P.L.1975, c.387  
38 (C.54:53-7); or

39       d. On or after January 1, 2016, collection of the liability  
40 established by a compromise agreement would cause an individual  
41 taxpayer undue economic hardship as defined by R.S.54:48-2.

42       However, acceptance of an offer in compromise of a civil  
43 liability shall not operate to remit a criminal liability, nor shall  
44 acceptance of a compromise of a criminal liability operate to remit a  
45 civil liability.

46       For the purpose of administering subsection c. of this section, the  
47 director may require a taxpayer to provide periodic statements of  
48 financial condition in such form as the director may prescribe.

1 Action may be taken by the director under subsection c. only if the  
2 director gives notice to the taxpayer 30 days before the date of any  
3 action and the notice includes a statement of the reasons the director  
4 has for believing a significant change in the financial condition of  
5 the taxpayer has occurred.

6 (cf: P.L.1992, c.175, s.18)

7  
8 7. This act shall take effect immediately.

9  
10  
11 STATEMENT

12  
13 This bill permits State tax debt forgiveness for individual  
14 taxpayers experiencing undue economic hardship. The purpose of  
15 this bill is to relieve individuals facing significant economic  
16 challenges from burdensome and potentially uncollectible tax debt.

17 For taxpayers unable to afford basic living expenses, the bill  
18 provides three potential forms of tax debt relief:

19 (i) Interest & Penalty Relief;

20 (ii) Pre-Tax Court Filed Closing Agreement Relief; and

21 (iii) Post-Tax Court Filed Compromise Agreement Relief.

22 The bill is modeled after the New York offer in compromise  
23 program's undue economic hardship relief provisions.

24  
25 ***(i) Interest & Penalty Relief***

26 Currently, the Division of Taxation may waive interest and  
27 penalties for reasonable cause, but that waiver is statutorily floored  
28 to not below three percentage points above the prime rate.

29 This bill allows interest and penalty relief without respect to  
30 interest rates for individual taxpayers facing undue economic  
31 hardship.

32  
33 ***(ii) Pre-Tax Court Filed Closing Agreement Relief***

34 Currently, the division may settle pre-Tax Court liability  
35 pursuant to a closing agreement for a sufficient reason and provided  
36 that the State suffers no disadvantage. Closing agreements may  
37 only be reopened upon a showing of fraud or similar circumstances.

38 This bill allows the division to enter into a closing agreement for  
39 pre-Tax Court filed liabilities if collecting the tax liability would  
40 cause an individual taxpayer an undue economic hardship. The bill  
41 also allows closing agreements to be reopened post-settlement if  
42 collection of a liability would cause an individual taxpayer an  
43 undue economic hardship.

44  
45 ***(iii) Post-Tax Court Filed Compromise Agreement Relief***

46 Currently, the division may compromise pre-judgment and pre-  
47 Attorney General referred tax liability if there is doubt as to liability  
48 or collectability. The division may also compromise the timing of

1 payments through an installment payment schedule for situations  
2 involving extreme financial hardship if the compromise schedule  
3 does not compromise the interest of the State. Compromised  
4 installment payment schedules do not relieve a taxpayer from  
5 interest accrual. Further, compromise agreements may only be  
6 reopened under limited circumstances.

7 This bill allows the division to compromise tax liability for cases  
8 that have been filed with the Tax Court if imposing the liabilities  
9 would cause an individual taxpayer undue economic hardship. The  
10 bill also explicitly allows the division to compromise payment  
11 schedules based solely on a finding that the previously scheduled  
12 time of payment would cause an individual taxpayer undue  
13 economic hardship. Interest accrual on compromised installment  
14 payments may also be waived if collection would cause an  
15 individual taxpayer undue economic hardship. Further, the bill  
16 authorizes the division to reopen a compromise agreement if  
17 collection of the related liability would cause an individual taxpayer  
18 undue economic hardship.

19 The bill is scheduled to take effect immediately and apply to tax  
20 debt relief entered into on or after January 1, 2016.