

CHAPTER 125

AN ACT authorizing a multistate personal income tax refund set-off program, supplementing Title 54A of the New Jersey Statutes.

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

C.54A:9-8.4 Definitions relative to multistate personal income tax refund setoff program; authorization, procedure.

1. a. As used in this section:

"Taxpayer" means any person identified by a claimant state, under this section, as owing taxes to that claimant state, including the spouse of the taxpayer if the spouse filed a joint return with the taxpayer for the tax year for which tax is owed.

"Claimant state" means any other state of the United States, the City of Philadelphia, Pennsylvania, New York City, New York, or the District of Columbia that extends a like comity for the collection of tax owed to this State.

"Taxes" means any amount of tax imposed on the income of an individual or an estate and paid by the individual or estate under the laws of the claimant state, including any additions to tax for penalties and interest, which is finally due and payable to the claimant state, and with respect to which any administrative or judicial remedies, or both, have been exhausted or have lapsed, and which is legally enforceable under the laws of the claimant state, whether or not there is an outstanding judgment for such sum.

"Refund" means any taxpayer's claim to repayment of an overpayment of gross income tax determined by this State to be owed to the taxpayer by this State, after the overpayment has been applied to any other debt of the taxpayer to this State.

"Tax officer" means a unit or official of a claimant state, or the duly authorized agent of such unit or official, charged with the imposition, assessment or collection of taxes of that state.

b. Upon the request and certification of the tax officer of a claimant state, the director may withhold all or a portion of any refund to which such taxpayer would otherwise be entitled and pay a withheld amount to the claimant state, in accordance with the provisions of this section. The director shall not withhold a refund unless the laws of the claimant state: allow the director to certify that an individual or an estate owes gross income tax, including any additions to tax for penalties and interest, to this State and to request that the tax officer of the claimant state withhold all or a portion of any claim to repayment of an overpayment of tax imposed on the income of an individual or an estate and paid by the individual or estate under the laws of the claimant state to which such person would otherwise be entitled and provide for the payment of such withheld amount to this State.

c. A certification from a claimant state shall include the full name and address of the taxpayer; the taxpayer's Social Security number or federal employer identification number; the amount of individual income tax owed to that state, including a detailed statement for each taxable period showing tax, interest and penalty; and a statement that any administrative or judicial remedies, or both, have been exhausted or have lapsed and that the amount of individual income tax is legally enforceable under the laws of that state.

d. Upon receipt by the director of the required certification, the director shall notify the taxpayer: that the director received a request to withhold the refund; that the taxpayer has the right to protest the withholding of the refund; that failure to file a protest in accordance with subsection e. of this section shall constitute a waiver of any demand against this State on account of the withheld amount; and that the withheld amount will be paid to the claimant state. The notice shall include a copy of the certification by the tax officer of the claimant state. Ninety-one days after the date on which it is mailed, a notice under this subsection shall be final, except only for such amounts as to which the taxpayer has filed a written protest with the director, as provided in subsection e. of this section.

e. A taxpayer notified in accordance with subsection d. of this section may, on or before the ninetieth day after the mailing of the notice by the director, protest the withholding of a refund, by filing with the director a written protest in which the taxpayer shall set forth the grounds on which the protest is based. If a timely protest is filed, the director shall impound the claimed amount of the refund and send a copy of the protest to the claimant state for determination of the protest on its merits in accordance with the laws of that state. The director shall pay the impounded amount to the taxpayer, if the claimant state fails, within 45 days of the director

mailing the copy of the protest to the claimant state, to certify that the claimant state has reviewed the grounds on which the protest is based and to recertify the amount of taxes which is finally due and payable to the claimant state.

f. Subject to the provisions of subsections d. and e. of this section, the director shall: pay the claimant state the entire amount withheld or the amount certified, whichever is less; pay any refund in excess of the certified amount to the taxpayer; and, if the amount certified exceeds the amount withheld, withhold amounts from subsequent refunds due to the taxpayer, provided that claimant state agrees to withhold subsequent claims to repayment of an overpayment of tax imposed on the income of an individual or an estate and paid by the individual or estate under the laws of the claimant state due to persons certified by the director as owing gross income tax to this State.

g. For any refund amount paid to a claimant state under this section, interest as provided under section 7 of P.L.1992, c.175 (C.54:49-15.1) or subsection (f) of N.J.S.54A:9-7 shall not be allowed or paid to the claimant state, the taxpayer, or any other person or entity.

h. The director may enter into agreements with the tax officers of claimant states relating to procedures and methods to be employed by a claimant state with respect to: the operation of this section; safeguards against the disclosure or inappropriate use of any tax record information that identifies, directly or indirectly, a particular taxpayer; and a minimum amount of taxes owed by a taxpayer to a claimant state, so that, if a taxpayer owes less than that amount to such claimant state, the claimant state will not avail itself of the provisions of this section with respect to that taxpayer.

i. The collection procedures prescribed by this section shall not be construed as a substitute for any other remedy available by law to the director.

2. This act shall take effect immediately.

Approved July 2, 2005.