

CHAPTER 288

AN ACT requiring owners of pass-through entities to credit certain payments the entities make on the owner's behalf against the owners' estimated taxes, amending P.L.2002, c.40, P.L.1981, c.184, and N.J.S.54A:9-6.

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

1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to read as follows:

C.54:10A-15.11 Tax payment by certain partnerships; definitions.

12. a. (1) A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax. The amount of tax shall be equal to the sum of: all of the share of the entire net income of the partnership for that privilege period of all nonresident noncorporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .0637 plus all of the share of the entire net income of the partnership for that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09.

(2)(a) A partnership that is subject to the tax payment requirements of paragraph (1) of this subsection shall make installment payments of 25% of that tax on or before the 15th day of each of the fourth month, sixth month and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period.

(b) A partnership required to make an installment payment pursuant to subparagraph (a) of this paragraph shall be deemed to make an installment payment subject to the provisions of section 5 of P.L.1981, c.184 (C.54:10A-15.4) and shall be liable for any additions to tax provided thereunder.

b. An amount of tax paid by a partnership pursuant to paragraph (1) of subsection a. of this section and an installment payment paid pursuant to subparagraph (a) of paragraph (2) of subsection a. of this section shall be credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the multiplier rate for that partner class under subsection a. of this section, and each amount of tax so credited shall be deemed to have been paid by the respective partner in respect of the privilege period or taxable year of the partner.

- c. For the purposes of this section:

"Investment club" means an entity: that is classified as a partnership for federal income tax purposes; all of the owners of which are individuals; all of the assets of which are securities, cash, or cash equivalents; the market value of the total assets of which do not exceed, as measured on the last day of its privilege period, an amount equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and which is not required to register itself or its membership interests with the federal Securities and Exchange Commission; provided that beginning with privilege periods commencing on or after January 1, 2003 the director shall prescribe the total asset value amounts which shall apply by increasing the \$250,000 total asset amount and the per owner \$35,000 amount hereinabove by an inflation adjustment factor, which amounts shall be rounded to the next highest multiple of \$100. The inflation adjustment factor shall be equal to the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the privilege period begins, by that index for September of 2001;

"Nonresident noncorporate partner" means, an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident taxpayer or a resident estate or trust under that act;

"Nonresident corporate partner" means a partner that is not an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a corporation exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular place of business in this State other than a

statutory office; and

"Partner" means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

2. Section 5 of P.L.1981, c.184 (C.54:10A-15.4) is amended to read as follows:

C.54:10A-15.4 Underpayment; amount added to tax; interest.

5. a. In case of any underpayment of an installment payment by a taxpayer, there shall be added to the tax for the fiscal or calendar accounting year an amount determined by applying the rate established in this section to the amount of the underpayment for the period of the underpayment.

b. For purposes of subsection a., the amount of underpayment shall be the excess of:

(1) The lesser of the amount of the installment payment which would be required to be paid if all installment payments and all payments of tax made pursuant to subsection a. of section 12 of P.L.2002, c.40 (C.54:10A-15.11) and credited to the taxpayer pursuant to subsection b. of section 12 of P.L.2002, c.40 were equal to 90% of the tax shown on the return for the fiscal or calendar accounting year, or if no return was filed, 90% of the tax for that year, or 100% of the tax shown on the tax return of the taxpayer for the preceding taxable year over

(2) The amount, if any, of the installment payment paid on or before the last date prescribed for payment.

c. For purposes of subsection a., the period of the underpayment shall run from the date the installment payment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month after the close of the fiscal or calendar accounting year.

(2) With respect to any portion of the underpayment, the date on which that portion is paid.

For purposes of this subsection, a payment of any installment payment shall be considered a payment of any previous underpayment only to the extent that payment exceeds the amount of the installment payment determined under subsection b. (1) for that installment payment.

d. Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment payment shall not be imposed if the total amount of all installment payments made on or before the last date prescribed for the payment of that installment equals or exceeds the amount which would have been required to be paid on or before that date if the total amount of all installment payments were the lesser of (1) or (2) as follows:

(1) An amount equal to the tax computed at the rates applicable to the current fiscal or calendar accounting year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year; or

(2) An amount equal to 90% of the tax for the current fiscal or calendar accounting year computed by placing on an annualized basis the taxable entire net income and entire net worth:

(a) For the first three months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the fourth month,

(b) For the first three months or for the first five months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the sixth month,

(c) For the first six months or for the first eight months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the ninth month,

(d) For the first nine months or for the first 11 months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the 12th month, and

(e) For the last three months of the preceding taxable year, in the case of the installment payment required to be paid in the first month of the current fiscal or calendar accounting year.

e. Any taxpayer who shall fail to pay, or shall underpay by more than 10% of the amount due, any installment payment required pursuant to this act, shall pay, in addition to the tax, interest on the amount of underpayment as provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

3. N.J.S.54A:9-6 is amended to read as follows:

Additions to tax and civil penalties.

54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax return. In case of failure to file a tax return under this act on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return such amount as is required under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. For this purpose, 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.

(b) Deficiency due to negligence. If any part of a deficiency is due to negligence or intentional disregard of this act or rules or regulations hereunder (but without intent to defraud), there shall be added to the tax an amount equal to 10% of the deficiency.

(c) Failure to file declaration or underpayment of estimated tax. If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, the taxpayer shall be deemed to have made an underpayment of estimated tax except as provided pursuant to subsection (d) of this section. There shall be added to the tax for the taxable year an amount at the rate as is required under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., upon the amount of the underpayment for the period of the underpayment but not beyond the 15th day of the fourth month following the close of the taxable year. The amount of underpayment shall be the excess of the lesser of: (1) the amount of the installment which would be required to be paid if the estimated tax were equal to 80% of the tax (two-thirds of the tax for farmers referred to in subsection (e) of section 54A:8-4) shown on the return for the taxable year (or if no return was filed, of the tax for such year), or (2) 100% of the tax shown on the tax return of the taxpayer for the preceding taxable year; over the amount, if any, of the installment paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death.

(d) Exception to addition for underpayment of estimated tax. The addition to tax under subsection (c) with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax and all payments of tax made pursuant to subsection a. of section 12 of P.L.2002, c.40 (C.54:10A-15.11) and credited to the taxpayer pursuant to subsection b. of section 12 of P.L.2002, c.40 made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following set forth in paragraphs (1) and (2) and subject to paragraph (3) is the lesser--

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least--

(A) An amount equal to 100% of the tax shown on the return of the taxpayer for the preceding taxable year, except as provided pursuant to paragraph (3) of this subsection, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of 12 months, or

(B) An amount equal to 100% of the tax computed, except as provided pursuant to paragraph (3) of this subsection, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to the taxpayer's personal exemptions for the taxable year, but otherwise on the basis of the facts shown on the taxpayer's return for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to 80% of the tax for the taxable year (two-thirds of the tax for farmers referred to in subsection (e) of section 54A:8-4) computed by placing on an annualized basis the income for the months in the taxable year ending before the month in which the installment is required to be paid (or, in the case of a trust or estate, the income for the months ending before the date one month before the month in which the installment is required). For purposes of this subparagraph, the income shall be placed on an annualized basis by--

(i) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the income for the months in the taxable year ending before the month in which the installment is required to be paid (or, in the case of a trust or estate, the income for the months ending before the date one month before the month in which the installment is required),

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls (or, in the case of a trust or estate, the number of months ending before the date one month before the month in which such installment date falls), and

(iii) Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment); or

(2) An amount equal to 90% of the tax computed, at the rates applicable to the taxable year, on the basis of the actual income for the months in the taxable year ending before the month in which the installment is required to be paid.

(3) If the taxable gross income shown on the return of the taxpayer for the preceding taxable year exceeds \$150,000 (\$75,000 in the case of a married individual within the meaning of section 7703 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.7703, filing separately for the taxable year for which the amount of the installment is being determined) subparagraphs (A) and (B) of paragraph (1) of this subsection shall be applied by substituting "110%" for "100%". For purposes of this paragraph, "taxable gross income" means gross income after any allowable deductions under chapter 3 or 3A of the "New Jersey Gross Income Tax Act" (C.54A:3-1 et seq. or 54A:3A-1 et seq.); or, in the case of a trust or estate, gross income after any allowable deductions or exemptions, income commissions and amounts distributed or credited to beneficiaries; and "gross income" for a nonresident means gross income calculated as if such nonresident were a resident.

(e) Deficiency due to fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to 50% of the deficiency. This amount shall be in lieu of any other addition to tax imposed by subsection (a) or (b).

(f) Nonwillful failure to pay withholding tax. If any employer, without intent to evade or defeat any tax imposed by this act or the payment thereof, shall fail to make a return and pay a tax withheld by him at the time required by or under the provisions of section 54A:7-4, such employer shall be liable for such tax and shall pay the same together with interest thereon and the addition to tax provided in subsection (a), and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The director shall have the same rights and powers for the collection of such tax, interest and addition to tax against such employer as are now prescribed by this act for the collection of tax against an individual taxpayer.

(g) Willful failure to collect and pay over tax. Any person required to collect, truthfully account for, and pay over the tax imposed by this act who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No addition to tax under subsection (b) or (c) shall be imposed for any offense to which this subsection applies.

(h) Failure to file certain information returns. In case of each failure to file a statement of a payment to another person, required under authority of subsection (c) of section 54A:8-6 (relating to information at source, including the duplicate statement of tax withheld on wages) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the director and in the same manner as tax, be paid by the person so failing to file the statement, a penalty of \$2.00 for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$2,000.00.

(i) Additional penalty. Any person who with fraudulent intent shall fail to pay, or to deduct

or withhold and pay, any tax, or to make, render, sign or certify any return or declaration of estimated tax or to supply any information within the time required by or under this act, shall be liable to a penalty of not more than \$5,000.00, in addition to any other amounts required under this act, to be imposed, assessed and collected by the director. The director shall have the power, in his discretion, to waive, reduce or compromise any penalty under this subsection.

(j) Additions treated as tax. The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes and any reference in this act to income tax or tax imposed by this act, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section 54A:9-2, this subsection shall not apply to:

(1) Any addition to tax under subsection (a) except as to that portion attributable to a deficiency;

(2) Any addition to tax under subsection (e); and

(3) Any additional penalty under subsection (i).

(k) Determination of deficiency. For purposes of subsections (b) and (c), the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(l) Person defined. For purposes of subsections (f), (g), (h) and (i), the term person or employer includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation) or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

4. This act shall take effect immediately and apply to privilege periods beginning on or after January 1 next following enactment.

Approved January 9, 2006.