

CHAPTER 36

AN ACT concerning filing methods for State tax returns and payments, including electronic filing methods, and requiring certain tax preparers to electronically file gross income tax returns, amending R.S.54:48-2, P.L.1992, c.175 and R.S.54:49-4 and supplementing Title 54A of the New Jersey Statutes.

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

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

Definitions.

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

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

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

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

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

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

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

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

2. Section 13 of P.L.1992, c.175 (C.54:49-3.1) is amended to read as follows:

C.54:49-3.1 Date deemed delivery date, acceptable methods of filing; transmittal as filing.

13. a. Except as another payment method may be specified by law, a tax return, report, notice, petition, protest, claim or other document to be filed or remittance containing payment of tax, required to be filed within a prescribed period, or on or before a prescribed date, under the provisions of any State tax that, after the period or the date, is delivered by United States mail to the director, bureau, office, officer or person with which or with whom the document is required to be filed shall be deemed to be delivered on the date of the United States postmark stamped on the envelope. This shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of the document, determined with regard to any extension granted for filing, and the document was deposited in the mail, postage prepaid, properly addressed to the director, bureau, office, officer or person with which or with whom the document is required to be filed. If any document is sent by United States registered or certified mail, such registration or

certification shall be prima facie evidence that the document was delivered to the director, bureau, office, officer or person to which or to whom addressed. This section shall also apply to postmarks not made by the United States Postal Service to the extent the Director of the Division of Taxation in the Department of the Treasury may prescribe.

b. Notwithstanding any law to the contrary, the director is authorized to permit or mandate the acceptable methods of filing any return required to be filed and making any payment required to be remitted within a prescribed period, or on or before a prescribed date, under the provisions of any State tax law. The director may prescribe reasonable methods for filing and payment, including electronic filing and payment methods, at the director's discretion, by the promulgation of regulations. The provisions of this section shall not be deemed to authorize the director to require any individual taxpayer preparing the taxpayer's own gross income tax return pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or any tax preparer preparing a gross income tax return pro bono, to file that return or to remit payment of the tax by electronic methods.

c. For returns required or permitted by law, or by regulation promulgated by the director, to be filed electronically, the date the return is transmitted to the division shall be deemed the date of filing.

3. R.S. 54:49-4 is amended to read as follows:

Late filing penalty.

54:49-4. a. In addition thereto any taxpayer failing to file a return with the director within the time prescribed under the act imposing such tax shall be liable to a late filing penalty of \$100 for each month or fraction thereof that such return is delinquent, plus a penalty of 5% per month or fraction thereof of the underpayment not to exceed 25% of such underpayment, except that if no return has been filed within 30 days of the date on which the first notice of delinquency in filing the return was sent to the taxpayer, the penalty shall accrue at 5% per month or fraction thereof of the total tax liability not to exceed 25% of such tax liability. Unless any part of any underpayment of tax required to be shown on a return or report is shown to be due to reasonable cause, there shall be added to the tax an amount equal to 5% of the underpayment.

b. In addition to any other penalty for failing to file a return within the time prescribed or underpayment provided in this section or pursuant to any other provision of law, if a taxpayer or tax preparer fails to use electronic methods to file a return as may be required pursuant to the provisions of subsection b. of section 13 of P.L.1992, c.175 (C.54:49-3.1), section 4 of P.L.2006, c.36 (C.54A:8-6.1) or the law imposing the tax, or if a taxpayer fails to use electronic methods to pay tax as may be required pursuant to the provisions of subsection b. of section 13 of P.L.1992, c.175 (C.54:49-3.1), or the law imposing the tax, the taxpayer shall be liable for a penalty of \$50 for each return or payment for which the taxpayer failed to file or pay electronically as may be applicable, and the tax preparer shall be liable for a penalty of \$50 for each return for which the tax preparer failed to file electronically as may be applicable. The director may exercise discretion to abate all or any portion of the penalty in any circumstances the director determines appropriate, including but not limited to circumstances in which a taxpayer or tax preparer demonstrates to the director's satisfaction that the failure to file or pay electronically was due to reasonable cause.

C.54A:8-6.1 Certain tax preparers required to use electronic methods for filing.

4. a. (1) Notwithstanding any other law to the contrary, for New Jersey gross income tax returns for taxable years beginning in 2006, if a tax preparer prepared or filed 100 or more gross income tax returns for the prior taxable year, the tax preparer shall use electronic methods for filing the returns and paying the tax for all the returns prepared or filed by the tax preparer for a taxable year, subject to such exceptions as the Director of the Division of Taxation may determine are reasonable. The director may exercise discretion to extend this requirement to a tax preparer that has prepared or filed 100 or more gross income tax returns for any of the five prior taxable years.

(2) The director is authorized to extend by regulation the electronic methods filing requirement, commencing with New Jersey gross income tax returns filed for taxable years beginning in 2007, to tax preparers that prepared or filed 50 or more gross income tax returns for the prior taxable year. The director, by regulation, may exercise discretion to extend this requirement to a tax preparer that has prepared or filed 50 or more gross income tax returns for any of the five prior taxable years.

b. As used in this section, "tax preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

c. The director shall determine the method or methods of electronic filing of returns and paying tax that satisfy the requirements imposed in this section including a procedure by which a taxpayer may elect that the tax preparer not file the taxpayer's return by electronic methods.

d. The director is authorized to determine if the requirements of this section shall apply to declarations and payments of estimated tax made by a tax preparer. To the extent that the director determines it will not be unduly burdensome, the director is authorized to require employers and payors of gambling winnings that withhold tax under N.J.S.54A:7-1, and payors of voluntary withholdings under section 1 of P.L.1989, c.328 (C.54A:7-1.1), to file returns and pay tax by electronic methods.

e. A tax preparer, employer or payor, other than an individual taxpayer preparing the taxpayer's own gross income tax return or a tax preparer preparing a return pro bono, failing to use electronic methods as required in this section shall be liable for the penalties provided in subsection b. of R.S.54:49-4 or as otherwise provided under the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

5. This act shall take effect immediately.

Approved July 8, 2006.