

TAXATION—Amnesty, Interests, Costs and Penalties—1987 N.J. Sess. Law Serv. 76 (West).*

Many states have resorted to a tax amnesty program as an effective means of generating added revenue.¹ New Jersey, responding to the demand by local leaders for increased aid to the State's cities, instituted a tax amnesty program in 1987 by enacting the Tax Amnesty Act on March 11, 1987.² The purpose of New Jersey's tax amnesty program is to generate revenue in order to aid fifty-one "distressed cities."³ Faced with dwindling federal aid, possible layoffs of police and firemen, and citizen pressure to maintain low tax rates, these cities looked to the state for a solution to their budgetary problems.

In reaching a solution to this fiscal crisis, Governor Kean proposed the repeal of the Ford tax relief law,⁴ which allows property owners and tenants to deduct their property taxes from their income tax. According to the Governor, a repeal of the Ford law would provide the state with an additional \$165 million annually and create a permanent funding source for municipalities in financial difficulties.⁵ Of this \$165 million, the Governor wanted to use \$85 million to fund the cities and use the remainder to exempt lower income persons from paying any state income tax.⁶ However, the legislature refused to support the repealer and instead opted for a tax amnesty program to be used to fund the cities.⁷

The legislature's funding plan called for \$62 million to be

* This summary was prepared prior to the termination of the Amnesty program.

¹ Parle & Hirlinger, *Evaluating the Use of Tax Amnesty by State Governments*, 46 PUB. ADMIN. REV. 246 (1986).

² Taxation—Amnesty, Interests, Costs and Penalties, 1987 N.J. Sess. Law Serv. 76 (West) (to be codified at N.J. STAT. ANN. § 54:53-16) [hereinafter cited as Amnesty Act or Act].

³ *Id.* Cities are classified as distressed by the Department of Community Affairs.

⁴ Pub. L. No. 1985, ch. 304, 1985 N.J. Sess. Law Serv. 304 (West) (codified at N.J. STAT. ANN. §§ 54:3A-1 to -14 (West 1985)).

⁵ Pub. L. No. 1987, ch. 76, 1987 N.J. Sess. Law Serv. 76 (West), Governor's Reconsideration and Recommendation Statement Assembly, No. 823-L.1987, c. 76.

⁶ *Id.*

⁷ *Kean now supports 'modified' tax amnesty*, The Star-Ledger (Newark, N.J.), Mar. 6, 1987, at 1, col. 4.

distributed to the state's cities. Of the \$62 million, \$12 million would be appropriated from the state's budget surplus to the Supplemental Safe and Clean Neighborhoods Program.⁸ This program is designed to help municipalities pay policemen's salaries. The remaining \$50 million would be generated through a state tax amnesty and appropriated to the Distressed Cities Program under the Special Municipal Aid Act.⁹

The Amnesty Act amends and supplements the administration and enforcement of state taxes. Administratively, the Act reclassifies the State Tax Department as the Division of Taxation in the Department of the Treasury. Accordingly, the Commissioner of the Tax Department will now be the Director of the Division of Taxation.

Among the added powers given the Director in the Act are those concerning the imposition of new penalties on tax delinquents. The Director is given the authority to either impose on the taxpayer a fee for the amount it costs the state to collect the outstanding liability or impose a fee the greater of 5% of the tax or \$100. If the liability remains outstanding after the fee is imposed, the Director may refer the matter to the Attorney General at which time the fee becomes 10% of the tax or \$200, whichever is greater. If the liability continues to remain unpaid, the director may institute a suit for collection and the fee then becomes 20% of the tax or \$500, whichever is greater.

Additionally, the Act authorizes the Director to enter into agreements with other states to provide for administration and reciprocal enforcement of each state's tax laws. This measure should result in greater enforcement of the tax laws and, consequently, increased tax revenues.

The Act provides for penalties for civil servants and provisional employees who misuse the information to which they have access. Any officer or employee of the state having access to tax records is prohibited from divulging any information contained in those records. The Act increases the penalty for a violation of this rule from a fine not to exceed \$1,000 or imprisonment for up to one year, or both, to a fine of \$7,500 or imprisonment for up to eighteen months, or both.

⁸ Pub. L. No. 1987, ch. 78, 1987 N.J. Sess. Law Serv. 78 (West).

⁹ Pub. L. No. 1987, ch. 75, 1987 N.J. Sess. Law Serv. 75 (West).

As for the tax amnesty period, the Act authorizes the Director to establish a period of 90-days¹⁰ during which any taxpayer who has been delinquent on meeting any state tax obligations can meet these obligations without being subjected to any civil or criminal penalties. Outstanding liabilities will be subjected only to any interest due on them at a rate of 9%. In order to avoid giving taxpayers an opportunity to rely on the amnesty period to meet their 1987 tax obligations, the Act applies only to those taxable periods prior to January 1, 1987. Furthermore, the Act is inapplicable to any taxpayer who is currently under criminal investigation for a state tax matter.

Like other tax amnesty programs,¹¹ the Act provides incentives to delinquent taxpayers to pay their outstanding liabilities by mandating increased penalty and interest costs once the amnesty period ends. For example, the interest charged to a delinquent taxpayer will increase from a rate of 1-1/2% for each month that the tax liability remains unpaid to a new charge of five percentage points above the prime rate,¹² to be compounded daily upon the unpaid liability.

Additionally, the Act increases civil penalties. The late-filing penalty of two dollars for each day a return is delinquent will increase to \$100 per month. The penalty for an income tax deficiency due to negligence will increase from 5% to 10% of the deficiency. Also, the penalty for anyone who, with fraudulent intent, fails to pay, deduct, or withhold any income tax increases from \$1,000 to \$5,000. The Act establishes a new penalty to the tax law. If part of an assessment is due to civil fraud, then a penalty of 50% of the assessment may be added to the tax.

In addition to the increased civil penalties, the Act provides for increased criminal penalties once the amnesty period ends. In prescribing the penalties for violations of the tax laws, the Act streamlines the various tax penalties to correspond to the penalties of the state's criminal code.¹³ For example, the Act lists numerous violations that will subject a taxpayer to criminal penalties, including failure to: file a return or report, pay any tax,

¹⁰ The amnesty period was scheduled from September 10, 1987 until December 8, 1987.

¹¹ See *supra* note 1.

¹² N.J. STAT. ANN. § 54:49-3 (West 1986).

¹³ See N.J. STAT. ANN. §§ 2C:43-3, -6 (West 1986).

charge any state tax, withhold any state tax, display any tax certificate, and register with the Tax Division. If any of these violations are committed by a person acting recklessly and negligently, that person will be guilty of a disorderly persons offense and be subject to a \$1,000 fine. The Act makes a taxpayer guilty of a crime of the fourth degree, punishable by a fine of \$7,500 or imprisonment for up to eighteen months, or both, if that taxpayer provides the Division of Taxation with any information which would hinder an official investigation.

Certain taxpayers, such as vendors, are required to register or be licensed with the Division before commencing any operations. The Act deems failure to register or obtain a required license with the intent to evade any tax payment a crime of the fourth degree. This penalty also applies to any corporation operating under a voided corporate charter.

Taxpayers who act with intent to defraud the state or evade their tax liability will be committing a crime of the third degree, punishable by a fine of \$7,500 or imprisonment for three to five years, or both. Violations which subject a person to a punishment of the third degree include failure to file a return or report; failure to pay any tax, penalty, or interest when due; failure to file an accurate return; failure to maintain accurate books or records; failure to collect or withhold any required tax, and failure to submit any tax, once collected, to the Division of Taxation. However, if a person collects taxes in excess of \$75,000 and fails to submit those taxes to the Division of Taxation, the Act prescribes that the person shall be guilty of a crime of the second degree, punishable by a fine of \$100,000 or imprisonment between five to ten years, or both. Previously, penalties subjected a taxpayer to a fine of \$1,000 or imprisonment for one year, or both, for business tax evasion and a \$5,000 fine or imprisonment for one year, or both, for income tax evasion. Taxpayers convicted of three or more subsequent tax violations will receive a mandatory prison sentence. It is hoped that as a result of these more stringent penalties, taxpayers will take advantage of the state's amnesty period and future tax evasion will be deterred.¹⁴

The Act provides for other miscellaneous provisions and penalties. Among the other tax penalties amended in the Act are

¹⁴ See *supra* note 1.

those concerning cigarette taxes. For example, the Act increases the penalty for forging or counterfeiting revenue stamps from a fine of \$2,000 or imprisonment for up to seven years, or both, to a crime of the third degree.¹⁵ Also, any person in possession of packages of cigarettes with counterfeit stamps will be guilty of a crime of the third degree. The current penalty makes this crime a misdemeanor. The Act amends the Gross Income Tax Act¹⁶ to include as income for tax purposes any income acquired through a crime.

The Act requires a tax preparer, who performs work on any state return, to sign his name and provide the tax identification number assigned to him or his employer. A failure to provide a name and number subjects the preparer to a twenty-five dollar fine.

Current taxes are also affected by the Act. The Act calls for the tax on the sale of litter-generating products to expire on December 31, 1991. The tax on the transfer of hazardous substances¹⁷ increases from \$0.01 to \$0.0125 per barrel transferred. For hazardous substances other than petroleum or petroleum products,¹⁸ the tax will increase from the greater of \$0.01 per barrel or 0.4% of the fair market value of the product to \$0.0125 per barrel or 1.0% of the fair market value of the product. In addition, the payor of any New Jersey gambling winnings, with the exception of the lottery, is required to withhold 3% for income tax purposes. Finally, the Act appropriates \$1,500,000 to the Division of Law and the Division of Criminal Justice in the Department of Law and Public Safety for the purpose of prosecuting criminal tax matters and assisting in civil tax enforcement and collection actions.

Although the Tax Amnesty Act will produce a substantial amount of revenue, it does not provide a long-term solution to the many fiscal problems being experienced by New Jersey's cities. Undoubtedly, these problems will have to be confronted again in the future. The Act will, however, expand the State's tax rolls, allow for greater enforcement of the tax laws, and provide

¹⁵ The penalty for a crime of the third degree is a fine of \$7,500, imprisonment of three to five years, or both. N.J. STAT. ANN. §§ 2C:43-3, -6.

¹⁶ N.J. STAT. ANN. § 54A:5-1 (West 1986).

¹⁷ N.J. STAT. ANN. § 58:10-23.11h (West 1986).

¹⁸ *Id.*

stricter penalties for those taxpayers who ignore their tax obligations.

Thomas J. Sateary