

SPECIAL ADOPTION

TREASURY-TAXATION

DIVISION OF TAXATION

Tax Amnesty

Special Adopted New Rules: N.J.A.C. 18:39

Special New Rules Adopted: November 9, 2018, by John J. Ficara, Acting Director, Division of Taxation.

Filed: November 9, 2018, as R.2018 d.202.

Authority: N.J.S.A. 54:50-1 and P.L. 2018, c. 46.

Effective Date: November 9, 2018.

Expiration Date: December 28, 2018.

Take notice that, in accordance with P.L. 2018, c. 46, the Division of Taxation (Division) has adopted the following new rules to establish procedures for a State tax amnesty period of November 15, 2018, through January 15, 2019. These new rules became effective on November 9, 2018, upon acceptance for filing by the Office of Administrative Law. The specially adopted new rules shall be effective for a period not to exceed 180 days from the date of enactment of P.L. 2018, c. 46 (July 1, 2018), that is, until December 28, 2018.

The Division will propose to readopt this chapter pursuant to the rulemaking requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., on or prior to December 28, 2018.

Federal Standards Statement

A Federal standards analysis is not required because the authority for the special adopted new rules is based on P.L. 2018, c. 46. The new rules are, therefore, independent from any Federal standards or requirements.

Full text of the specially adopted new rules follows:

CHAPTER 39

TAX AMNESTY – 2018

SUBCHAPTER 1. TAX AMNESTY

18:39-1.1 Eligibility for tax amnesty

(a) All eligible taxpayers with an outstanding New Jersey State tax liability reportable on any tax return due on or after February 1, 2009, and prior to September 1, 2017, are eligible for tax amnesty during the tax amnesty period designated by the Director of the Division of Taxation.

(b) The designated tax amnesty period will begin Friday, November 15, 2018, and end at midnight on Tuesday, January 15, 2019.

Example 1: A taxpayer was issued a Notice of Deficiency in June 2013, for underpayment of corporation business tax for the calendar year 2012. The return was due after February 1, 2009, and prior to September 1, 2017. The tax due for this period is eligible for the tax amnesty program, provided the taxpayer pays the amount of tax liability due and one-half of the balance of any interest that is due as of November 1, 2018, during the amnesty period and signs the required payment/waiver statement.

Example 2: A taxpayer with a December 31 fiscal year fails to report the gain on the sale of a capital asset that occurred in May 2017. The result of this failure is the underpayment of the

taxpayer's corporation tax liability and imposition of penalty and interest charges for the insufficiency of corporation tax installment payments. Even though the taxable event occurred prior to September 1, 2017, the return was due after September 1, 2017; specifically April 17, 2018. Therefore, the taxpayer is not eligible to receive amnesty on the tax liability.

Example 3: A seller sold an automobile in August 2017. The seller failed to remit the sales tax by September 20, 2017. The seller is not eligible for tax amnesty since the due date of the sales tax return occurs after September 1, 2017.

(c) A taxpayer may elect to participate and be granted tax amnesty for any eligible tax, which is payable to the Division of Taxation. Taxes and fees not payable to the Division of Taxation, such as, but not limited to, unemployment and disability taxes (payable to the Department of Labor and Workforce Development), licensing fees (payable to other State departments and agencies) and local property tax (payable to municipal tax collectors), are not eligible for tax amnesty.

(d) All taxpayers owing State taxes for an eligible period may receive tax amnesty, unless taxpayers are under criminal investigation or charge for a State tax matter, and that fact has been certified to the Division of Taxation by a county prosecutor or the Attorney General.

(e) A taxpayer who has a State tax assessment, which is the subject of any administrative or judicial appeal as of July 1, 2018 (the effective date of P.L. 2018, c. 46), may request that the Division of Taxation grant tax amnesty. Amnesty will only be granted if expressly approved by the Director. To make such a request, the taxpayer must set forth in writing the portions of the assessments for which amnesty is sought and withdraw them from the appeals process. The portion, if any, on which tax amnesty is not sought, nor granted, will continue to be the subject of the appeal and the five percent penalty in P.L. 2018, c. 46, section 1b, shall apply to it as of January 16, 2019.

(f) Tax amnesty will not be granted with respect to taxes, recovery fees, costs of collection, penalties, and/or interest otherwise eligible for tax amnesty that were paid prior to the start of the tax amnesty period.

(g) If a taxpayer has paid a tax in full but still owes penalty and interest on that tax, the outstanding liability for penalties (except for civil fraud and criminal penalties), and one-half of the balance of the interest due as of November 1, 2018, is eligible for tax amnesty upon payment of the remaining one-half of the balance of interest that is due as of November 1, 2018.

18:39-1.2 Scope of amnesty

(a) If tax amnesty is not granted, the taxpayer's obligation to pay the full amount of the tax due with penalty, interest, recovery fees, costs of collection, and applicable fees, if any, will not be waived.

(b) The waiver of one-half of the interest, penalties (except for civil fraud and criminal penalties), costs of collection, recovery fees, and prohibition against prosecution apply only to those amounts of tax and tax periods for which amnesty is requested and granted.

(c) Penalties and full interest will be imposed and proceedings will not be barred relating to any amount of tax later found to be due in excess of the tax amnesty payment.

(d) The taxpayer relinquishes all rights to a refund, and any administrative and/or judicial appeals, once amnesty is granted and the full payment of the tax and one-half of the balance of any interest due as of November 1, 2018, has been made.

18:39-1.3 Filing for tax amnesty

(a) To obtain tax amnesty, a taxpayer must visit the New Jersey Tax Amnesty website at www.taxamnesty.nj.gov to:

1. View what they owe/what their outstanding liability (amnesty eligible taxes, plus one-half of the balance of interest due);
2. File all required tax returns electronically, if available;
3. Make full payment for amnesty eligible taxes, plus one-half of the balance of interest due electronically/online; and
4. Acknowledge the payment/waiver statement before January 15, 2019, the end of the tax amnesty period.

(b) If tax returns cannot be filed electronically, a taxpayer can still make full payment and acknowledge the payment/waiver statement online, but mail paper tax returns to:

New Jersey Division of Taxation
Tax Amnesty
50 Barrack Street
PO Box 286
Trenton, NJ 08695-0286.

1. All filings delivered by mail must be postmarked by midnight on January 15, 2019, or delivered to the Division of Taxation by the close of business on January 15, 2019.

18:39-1.4 Granting or denial of tax amnesty

(a) Tax amnesty will be granted or denied by the Division of Taxation.

(b) A taxpayer will be denied tax amnesty if the tax amnesty forms and/or tax returns are not sufficiently complete for the Division to understand the period and tax for which amnesty is applied.

(c) Tax amnesty will be denied with respect to taxes not eligible for tax amnesty (for example, local property tax).

(d) A taxpayer will be denied tax amnesty for tax returns and liabilities that are due outside of the tax amnesty period in accordance with P.L. 2018, c. 46, section 1a.

(e) A taxpayer will be denied tax amnesty if the taxpayer is certified to be under criminal investigation or charged by the Attorney General or a county prosecutor.

(f) A taxpayer will be denied tax amnesty for nonpayment or underpayment of tax, payment with a dishonored check or other improper forms of payment.

(g) A taxpayer will be denied tax amnesty for any other acts or failures to act, which indicate that the taxpayer is not in compliance with this chapter or the enabling legislation.

18:39-1.5 Special situations

(a) A taxpayer with amnesty eligible tax items that are included in a judgment (Certificate of Debt or COD) filed by the Division of Taxation may apply and receive tax amnesty, provided the taxpayer complies with the terms of tax amnesty. However, payment of these tax liabilities will not result in the issuance of a Warrant of Satisfaction without further action by the taxpayer.

1. To obtain a Warrant of Satisfaction, the taxpayer will need to contact the Division of Taxation, Judgment Section, or assigned caseworker, to ensure all outstanding tax periods, including non-eligible amnesty periods, are satisfied, plus make full payment of any cost of collection associated with the judgment.

The Judgment Section can be contacted by writing to:

New Jersey Division of Taxation

Judgment Section

PO Box 245

Trenton, NJ 08695-0245, or by sending an e-mail to:

judgments.taxation@treas.nj.gov.

2. If a taxpayer fails to remit payment for cost of collection, a Warrant of Satisfaction will not be issued even though tax amnesty may have been granted. Eligibility for, and participation in, tax amnesty does not guarantee the issuance of a Warrant of Satisfaction for a judgment.

(b) A corporation that has had its corporate charter voided may be granted tax amnesty provided it complies with the terms of tax amnesty. However, payment of the corporation's tax liabilities will not result in the reinstatement of a corporate charter without further action by the taxpayer.

A corporation can only be reinstated upon full payment of all the taxes owed (this could include periods outside of the amnesty period) and filing of all required reinstatement forms and payment of all applicable filing fees. Corporations may file for reinstatement with the Division of Revenue and Enterprise Services at <https://www.nj.gov/treasury/revenue/reinstate.shtml> and select "Online Reinstatement Service." The fees associated with the reinstatement filing process are not eligible for amnesty.

(c) A taxpayer who has filed a complaint with the New Jersey Tax Court or who is pursuing an appeal before any other judicial tribunal may be considered for tax amnesty only if approved by the Director of the Division of Taxation, provided the taxpayer agrees to withdraw or otherwise cause the complaint or appeal to be dismissed with prejudice as to the amnesty eligible claims set forth in the complaint. The portion, if any, on which tax amnesty is not sought or granted will

continue to be the subject of litigation, and the five percent penalty in P.L. 2018, c. 46, section 1b shall apply to that portion as of January 15, 2019.

(d) A taxpayer currently under audit may be granted tax amnesty for any eligible State tax as to any part of an assessment to which he or she has agreed in writing.

18:39-1.6 Consequences of denial of tax amnesty

A taxpayer denied tax amnesty for any reason will have his or her payments applied to open tax periods.

18:39-1.7 Rights of taxpayer denied tax amnesty

(a) If a taxpayer is denied amnesty by the Division of Taxation, which notice of denial will be made to the taxpayer in writing or electronically, the taxpayer can appeal the decision by sending a letter explaining the basis of the disagreement within 30 days of the date of the notice denying tax amnesty. If the taxpayer is later found to be eligible for tax amnesty, the taxpayer must pay the applicable tax and one-half of the balance of interest due within 30 days from the date of a favorable decision. In cases where an unfavorable decision denying amnesty is returned in response to a timely filed letter of disagreement, the taxpayer may appeal to the Tax Court of New Jersey, pursuant to the provisions of N.J.S.A. 54:48-1 et seq., within 90 days of the date of the denial.

(b) The letter of disagreement should be addressed to:

New Jersey Division of Taxation

Amnesty Denial Review

PO Box 240

Trenton, NJ 08695-0240.

18:39-1.8 Finality of payment

(a) Refunds will not be issued with respect to any eligible State tax liabilities for which tax amnesty has been granted.

1. Consideration will be given to correcting errors made in a tax amnesty payment, which occurs during the amnesty period. Appropriate transfers to other tax accounts or refunds may be made during the amnesty period to remedy such errors. After the tax amnesty period, no such corrections, transfers, or refunds will be made.

2. A payment submitted by a taxpayer for tax amnesty is an admission by the taxpayer that he or she owes tax in the amount of which the payment was made.

3. Refund procedures available for taxes paid under other than tax amnesty conditions are not applicable to tax amnesty payments.