

iii. Pursuant to N.J.S.A. 54:49-11b, the reasonable reliance by the taxpayer on erroneous written advice furnished by an officer or employee of the Division of Taxation acting in the officer's or employee's official capacity entitling that taxpayer to appropriate penalty and interest waivers permitted by law, provided that the penalty or interest did not result from a failure of the taxpayer to provide adequate or accurate information to the officer or employee and provided such reliance was reasonable and the taxpayer had no knowledge of circumstances which should have put the taxpayer upon inquiry as to whether such facts were erroneous. For purposes of this subparagraph, no officer or employee of the Division of Taxation is authorized to provide written advice which is binding on the Division of Taxation in the absence of a written request from a taxpayer; or

iv. The filing of an amended return which shows an additional amount of taxes due or which adequately discloses the tax treatment of an item which should have been adequately disclosed with the original return, provided the amended return is filed prior to the time the taxpayer is first contacted by the Division of Taxation concerning an audit or an examination of the return.

2. In determining if the taxpayer exercised ordinary business care and prudence in providing for the payment of his tax liability, consideration will be given to the nature of the tax which the taxpayer has failed to pay. Thus, for example, facts and circumstances which, because of the taxpayer's efforts to conserve assets in marketable form, may constitute reasonable cause for nonpayment of income taxes may not constitute reasonable cause for failure to pay over trust fund taxes such as sales and gross income withholding taxes.

(e) The provisions of this section shall apply to the extent pertinent where any taxpayer substantially understates the amount of taxes required to be shown on the return and such understatement or omission was due to reasonable cause and not due to willful neglect. Reasonable cause and the absence of willful neglect may be determined to exist only where the taxpayer has acted in good faith.

Amended by R.1991 d.528, effective November 4, 1991.

See: 23 N.J.R. 1899(a), 23 N.J.R. 3342(c).

Added new (b)-(e).

Amended by R.1997 d.98, effective March 17, 1997.

See: 28 N.J.R. 3716(a), 29 N.J.R. 913(b).

In (a), added last sentence; and substantially amended (d)1iii.

Case Notes

Computation of interest mitigated by absence of fraud. *General Trading Co., Inc. v. Director, Div. of Taxation*, 83 N.J. 122, 416 A.2d 37 (1980).

18:2-2.8 Criminal penalties

(a) The State Tax Uniform Procedure Law contains criminal penalties for persons who violate the State tax laws administered by the Division of Taxation. Criminal provisions are prescribed by law for the following acts or omissions:

1. Any of the following constitute a disorderly persons offense:

i. Failure to file any return or report required by any State tax law;

ii. Failure to pay over any tax required by any State tax law;

iii. Filing or causing to be filed, or made any return, certificate, affidavit, representation, information, testimony or statement, required or authorized by any State tax law, which is false;

iv. Failure to file a bond required to be filed by any State tax law;

v. Failure to file an application for registration, certification, or such data in connection therewith as the director by regulation or otherwise may require under any State tax law;

vi. Failure to display or surrender any certificate of authority as may be required by any State tax law;

vii. Assigning or transferring any certificate of authority in violation of any State tax law;

viii. Failure to charge any state tax as required by any State tax law;

ix. Failure to separately state or account for any State tax as required by any State tax law;

x. Failure to withhold any State tax as required by any State tax law; or

xi. Failure to keep any records required by any State tax law or rule of the Director issued thereunder.

2. The offenses provided in (a)1 above shall be in addition to any other penalties prescribed in P.L. 1987, c.76 or otherwise prescribed by law.

3. Any of the following constitute a fourth degree crime:

i. Intentionally providing false information to hinder an official investigation, inquiry examination or audit by the Division of Taxation (N.J.S.A. 54:52-7);

ii. Failure to license or register with the Division of Taxation and/or engaging in conduct which would require registration with the intention to evade tax (N.J.S.A. 54:52-13);

iii. Knowingly operating under a voided corporate charter (N.J.S.A. 54:52-16);

- iv. Knowingly dealing with unlicensed persons and assisting such person in avoiding or evading any State tax (N.J.S.A. 54:52-17); or
 - v. Knowingly swearing to any false or fraudulent statement with an intention to evade or avoid any tax penalty or interest (N.J.S.A. 54:52-19).
4. Any of the following constitutes a third degree crime:
- i. Failure to file a return or report with intention to evade or avoid tax, fee, penalty or interest pursuant to State Tax Uniform Procedure Law (N.J.S.A. 54:52-7);
 - ii. Failure to remit any sums collected for the benefit of the State with intent to evade or avoid tax, fee, penalty and interest (N.J.S.A. 54:52-9);
 - iii. Preparation of false or fraudulent return report or statement with intent to evade or avoid any tax, fee, penalty or interest (N.J.S.A. 54:52-10);
 - iv. Preparation or maintenance of fraudulent or false books or records with intention to evade or avoid tax, fee, penalty or interest (N.J.S.A. 54:52-11);
 - v. Failure to maintain books or records as required by State tax law with intent to evade or avoid tax, fee, penalty or interest (N.J.S.A. 54:52-12); or
 - vi. Failure to collect or withhold any State tax with intention not to make timely payment of tax, fee, penalty or interest (N.J.S.A. 54:52-13).
5. The intentional failure to remit taxes collected or withheld of \$75,000.00 or more shall be considered a second degree crime.

18:2-2.9 (Reserved)**18:2-2.10 Credit for erroneous payments and collections**

(a) Where it is determined as a result of the audit of any taxpayer that a State tax has been erroneously or illegally collected from such taxpayer, or has been paid by such taxpayer under a mistake of law or fact, and where no questions of law or fact are involved, the Director may credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of a deficiency assessment. Such offsets will be made with the following limitations:

- 1. Credit for the erroneous payment must be made within the time in which a deficiency assessment must be made for such tax as provided by law; and
- 2. Credit shall only be applied in order to offset a liability for a period which is covered by the applicable assessment period; and
- 3. Credit for erroneous overpayments shall only be made to offset a deficiency assessment made by the Director under the same state tax law.

(b) An audit of a taxpayer can only be initiated by the Division and not at the request of a taxpayer.

18:2-2.11 Prime rate defined

For the purposes of determining the interest charge to be assessed against a taxpayer, prime rate shall mean 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 immediately preceding the quarter within which the tax or payment became due. The applicable rate shall be adjusted on the first business day of each quarter thereafter over the life of the debt. As to the calculation of interest accruing on and after July 1, 1993, prime rate means the 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.

Amended by R.1997 d.98, effective March 17, 1997.

See: 28 N.J.R. 3716(a), 29 N.J.R. 913(b).

Added last sentence.

SUBCHAPTER 3. REQUIREMENTS FOR PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER

Source and Effective Date

R.1994 d.63, effective February 7, 1994.
See: 25 N.J.R. 1078(a), 26 N.J.R. 824(a).