

## CHAPTER 39 TAX AMNESTY

### Authority

N.J.S.A. 54:50-1 and P.L. 1996, c.2.

### Source and Effective Date

R.1996 d.267, effective May 13, 1996.  
See: 28 N.J.R. 1892(a), 28 N.J.R. 3172(a).

### Executive Order No. 66(1978) Expiration Date

Chapter 39, Tax Amnesty, expires on May 13, 2001.

### Chapter Historical Note

Chapter 39, State Tax Amnesty, became effective September 8, 1987, pursuant to authority of N.J.S.A. 54:50-1, as R.1987 d.353. See: 19 N.J.R. 1075(a), 19 N.J.R. 1654(a). Pursuant to Executive Order No. 66(1978), Chapter 39, State Tax Amnesty, expired on September 8, 1992.

Chapter 39, Tax Amnesty, was adopted as emergency new rules by R.1996 d.189, effective March 15, 1996 (to expire May 14, 1996). See: 28 N.J.R. 1892(a). The concurrent proposal of Chapter 39, Tax Amnesty, was adopted without change by R.1996 d.267, effective May 13, 1996. See: Source and Effective Date.

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### SUBCHAPTER 1. TAX AMNESTY

#### 18:39-1.1 Eligibility for tax amnesty

(a) All eligible taxpayers with any outstanding New Jersey State tax liability reportable on any tax return due on or after January 1, 1987 and prior to January 1, 1996 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, March 15, 1996 and end midnight Saturday, June 1, 1996.

Example 1: A taxpayer was issued a Notice of Deficiency in June 1994 for underpayment of corporation business tax for the calendar year 1993. The return was due prior to January 1, 1996. The tax is eligible for remittance under the tax amnesty program, provided the

taxpayer pays the amount of tax liability due during the amnesty period.

Example 2: A taxpayer with a January 31 fiscal year fails to report the gain on the sale of a capital asset that occurred in March 1995. 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 January 1, 1996, the return was due after January 1, 1996. Therefore the taxpayer is not eligible to receive amnesty on either the tax liability or the penalty and interest charged for the insufficient installment payment that would be due on the gain from the sale of the capital asset.

Example 3: A vendor sold an automobile in January 1996. She failed to remit the sales tax in February of 1996. She is not eligible for tax amnesty since the due date of the sales tax return occurs after January 1, 1996. The due date of any tax returns must be before January 1, 1996 to be eligible for tax amnesty.

(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 not payable to the Division of Taxation, such as, but not necessarily limited to, unemployment and disability taxes (payable to the Department of Labor), boxing taxes (payable to the State Athletic Commission), 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) Tax amnesty will not be granted with respect to taxes, penalties and/or interest otherwise eligible for tax amnesty have been paid prior to the commencement of the tax amnesty period.

(f) If a taxpayer has paid a tax in full but still owes penalty and interest on that tax, the outstanding liability for penalty and interest is eligible for tax amnesty. The taxpayer will be sent a notice from the Division advising the taxpayer that the penalty and interest has been waived.

(g) Tax amnesty will be granted for penalty and interest only if the penalty and interest were assessed with respect to an eligible tax.

#### 18:39-1.2 Scope of tax amnesty

(a) When tax amnesty is granted, all collection costs, civil and criminal penalties and all interest attributable to the tax

and period for which tax amnesty has been granted will be waived.

(b) Once tax amnesty is granted, all penalties and interest as defined by the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., or any other State tax law and any civil, administrative or criminal proceedings are barred relating to the designated tax only.

(c) If tax amnesty is not granted, the taxpayer's obligation to pay the full amount of the tax due with penalty, interest and cost of collecting, if any, will not be forgiven.

(d) The waivers of interest and penalties and prohibition against prosecution apply only to those amounts of tax for which amnesty is requested and/or granted.

(e) Penalties and 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.

(f) Once amnesty is granted and the full payment of the tax for which a request for amnesty has been made, the taxpayer relinquishes all rights of administrative and judicial appeal which have not run or otherwise expired.

### 18:39-1.3 Application for granting tax amnesty

(a) To obtain tax amnesty, the Division of Taxation must receive from the taxpayer all required forms, and/or tax returns along with the full payment for amnesty eligible taxes.

1. The official forms of the Division of Taxation must be used. These include any forms or returns designed by the Division for use during the amnesty period and any regular New Jersey tax returns being filed under amnesty. Any information submitted for consideration for amnesty not submitted on the required forms will be considered incomplete and amnesty will be denied.

2. Official Tax Amnesty forms are available by writing to: Amnesty Headquarters, New Jersey Division of Taxation, CN 900, Trenton, NJ 08646-0900 or by calling 1-800-286-6613 or Tax Fax at (609) 588-4500, or inquiry on the Internet at <http://www.state.nj.us/treasury/taxation>.

3. The filing must be postmarked by midnight of the last day of the tax amnesty period or delivered to the Division of Taxation by midnight of the last day of the tax amnesty period.

4. Notwithstanding (a)1 above, if the taxpayer electing to participate in tax amnesty is unable to obtain or complete an official tax amnesty form or the necessary tax returns by the last day of the tax amnesty period, he may submit a letter which will, for purposes of the filing date, be considered timely filed. That letter must include the following information:

i. The taxpayer's name;

ii. The taxpayer's address;

iii. The taxpayer's ID number, if known, or Social Security number;

iv. The tax for which tax amnesty is being requested and its amount;

v. The period for which tax amnesty is being requested; and

vi. Payment of the tax in full.

5. The letter, in lieu of the submission of appropriate tax amnesty forms and/or tax returns, must be received by midnight of the last day of the tax amnesty period, or postmarked by that date. The tax amnesty election will not be considered complete until all necessary official tax returns have been signed and filed. Thus, the letter is to be used only in such emergencies where tax amnesty forms and/or tax returns cannot be obtained or completed prior to the final day of tax amnesty. The taxpayer must submit the necessary returns within 30 days of the letter's postmark; if not, amnesty will be denied. Taxpayers should keep copies of the applicable forms and/or tax returns and proof of mailing or delivery in order to avoid rejection of the subsequent filing of the tax returns on the grounds that such official filing is not timely.

(b) The taxpayer, in order to be eligible for any tax amnesty, must pay the tax within the period of tax amnesty.

1. If the taxpayer does not know or cannot calculate the tax due, the taxpayer may approximate the amount of this tax liability and send payment for that approximation to the Division within the tax amnesty period. Any subsequent bill to the taxpayer for additional tax due will bear full penalty and interest charges plus an additional five percent penalty which shall not be subject to waiver or abatement. It will not, however, affect the amount on which tax amnesty had previously been granted.

### 18:39-1.4 Granting or denial of tax amnesty

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

(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 liabilities arising outside of the tax amnesty period in accordance with P.L. 1996, c.2, §4(a):

(e) A taxpayer will be denied tax amnesty if the taxpayer is certified to be under criminal investigation or charge 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 established by the Division.

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

#### 18:39-1.5 Consequences of denial of tax amnesty

(a) A taxpayer denied tax amnesty for a reason other than having been certified as under criminal investigation or charge will have his payments applied to other open tax accounts.

(b) If amnesty is denied because the taxpayer is under criminal investigation or charge as certified by the Attorney General or a county prosecutor, the tax returns and amounts remitted will be returned to the taxpayer and the additional five percent penalty will not be assessed.

#### 18:39-1.6 Special rules

(a) A taxpayer who is subject to wage garnishment, attachment, or seizure of property by the Division of Taxation may apply and receive tax amnesty provided the taxpayer complies with the terms of tax amnesty. Upon full payment of all taxes due and the granting of tax amnesty, the Division will satisfy the applicable judgments and release any levies against real or personal property.

(b) A corporation that has had its corporate charter voided may be granted tax amnesty providing it complies with the terms of tax amnesty. A corporate charter can only be reinstated upon full payment of all taxes due, the payment of the fee to the Secretary of State, and approval of the Attorney General. Upon meeting these conditions, tax amnesty will be granted and the corporate charter reinstated.

(c) A taxpayer who has requested a conference with the Division of Taxation may be granted tax amnesty. This can be done provided the taxpayer sets forth the portions of the assessment for which amnesty is sought and withdraws them from the conference process. The portion, if any, on which tax amnesty is not granted will continue to be the subject of the conference.

(d) A taxpayer who has filed a complaint with the New Jersey Tax Court pursuing an appeal of right before any other judicial tribunal may be considered for tax amnesty provided the taxpayer agrees to dismiss the complaint with prejudice as to the amnesty eligible claims set forth in the complaint.

(e) A taxpayer may receive partial tax amnesty on any eligible part of unpaid State tax. The balance of the liability remains subject to penalty and interest at the rates applicable to the pre and post-amnesty periods. Full penal-

ties and interest will be imposed by the Director, Division of Taxation.

(f) A taxpayer currently under audit may be granted tax amnesty for any eligible State tax as to any part of an assessment he has agreed to. The taxpayer must, however, elect to be considered for tax amnesty for that part of the agreed liability, be eligible to receive it, and have it granted.

(g) A taxpayer seeking amnesty for gross income tax liabilities must pay the liability and, in addition to the election to be considered, must submit a return on the NJ-1040 or any other form acceptable by the Director of the Division of Taxation.

(h) A taxpayer can be denied amnesty for tax matters pending before the Conference and Appeals Branch or for tax matters pending before the Tax Court of New Jersey or other judicial body. Specific approval from the Director must be granted in order to receive amnesty for these situations.

#### 18:39-1.7 Rights of taxpayer denied tax amnesty

(a) A taxpayer denied tax amnesty for reasons other than being certified as under criminal investigation or charge can appeal the decision by sending a letter of disagreement within 30 days of the date of the notice denying tax amnesty stating the basis of his disagreement. If he is later found to be eligible for tax amnesty, he can pay the applicable tax 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, a 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 unfavorable decision.

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

New Jersey Division of Taxation  
Amnesty Review  
CN 900  
Trenton, NJ 08646-0900

#### 18:39-1.8 Overpayment of tax

(a) Amounts submitted in excess of any amounts due are to be credited against open tax accounts for the subject taxpayer when tax amnesty is applied for. A taxpayer can, however, apply for a refund of any penalty and interest paid in excess of the amount required by tax amnesty provided the taxpayer meets the following conditions:

1. The tax liability, penalty, and/or interest was paid during the tax amnesty period; and
2. The taxpayer is determined to be eligible for tax amnesty.

(b) 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.

2. After the tax amnesty period, no such corrections, transfers, or refunds will be made. A payment submitted for tax amnesty by a taxpayer is an admission by the taxpayer that he owes the amount of tax for which amnesty is being requested.

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