

CHAPTER 142
FORMERLY
HOUSE BILL NO. 144

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PROCEDURE, ADMINISTRATION, AND ENFORCEMENT OF TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 501, Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 501. Application of this chapter.

For tax periods beginning on or after January 1, 1992, ~~Except~~ where in conflict with a specific provision within another chapter of this title or, where applicable, a specific provision of Title 4 or Title 16 or a rule of the Delaware Alcoholic Beverage Control Commission, this chapter shall govern the administration, procedures and enforcement of the State revenue laws provided for under ~~Chapters 11, 13, 15, 19, 20, 21, 23, 25, 27, 29, 30, 33, 41, 43, 53, 54, 55, 61 and 63 of this title; §§ 3004 and 3005~~ Parts II, III, IV (except Chapters 51 and 52), V, and VI of this title; subchapter VII of Chapter 5 of Title 4; and Chapter 101 of Title 16.

Section 2. Amend Section 534(c), Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(c) (1) For tax periods beginning after December 31, 1999, if any ~~partnership~~ pass-through entity required to file a return under ~~§ 1174(a)~~ § 1605(a)(1) of this title ~~[repealed]~~ for any taxable year fails to file such return by the date prescribed therefor (determined with regard to any extension of time for filing) or files a return which fails to show the information required under ~~§ 1174(a)~~ 1605(a)(1) of this title ~~[repealed]~~, such ~~partnership~~ pass-through entity shall be liable for a penalty determined under paragraph (c)(2) of this section for each month, or fraction thereof, during which such failure continues (but not to exceed 5 months), unless it is shown that such failure was due to reasonable cause.

(2) For purposes of paragraph (c)(1) of this section, the amount of penalty for any month is the product of \$25, multiplied by the number of persons who were ~~partners~~ members in the ~~partnership~~ pass through entity during any part of the taxable year; provided, however, that the maximum penalty for any taxable year shall not exceed \$10,000.

(3) The penalty prescribed by this subsection shall be assessed against and shall be payable by the ~~partnership~~ pass-through entity, and the deficiency and appeal procedures provided in §§ 521-526 of this title shall not apply; provided, however, that the Director shall mail written notice of such penalty to the ~~partnership~~ pass-through entity, which may, within 60 days from the date of the mailing of such notice, institute a protest of such penalty to the Director, whose determination shall be final.

Section 3. Amend Section 534(d), Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~(d) (1) If any partnership required to file a return or 1 or more Schedules K 1 under § 1174(b) of this title [repealed] for any taxable year fails to file such return or Schedules K 1 by the date prescribed therefor (determined with regard to any extension of time for filing), such partnership shall be liable for a penalty determined under paragraph (d)(2) of this section for each month, or fraction thereof, during which such failure continues (but not to exceed 5 months), unless it is shown that such failure was due to reasonable cause.~~

~~(2) For purposes of paragraph (d)(1) of this section, the amount of penalty for any month is \$25, multiplied by the number of Schedules K 1 required to have been filed under § 1174(b) of this title [repealed]; provided, however, that the maximum penalty for any taxable year shall not exceed \$10,000.~~

~~(3) The penalty prescribed by this subsection shall be assessed against and shall be payable by the partnership, and the deficiency and appeal procedures provided in §§ 521-526 of this title shall not apply; provided, however, that the Director shall mail written notice of such penalty to the partnership, which may, within 60 days from the date of the mailing of such notice, institute a protest of such penalty to the Director, whose determination shall be final.~~

(d) (1) For tax periods beginning after December 31, 1999, if any pass-through entity fails to comply with the provisions of § 1605(a)(2) of this title, such pass-through entity shall be liable for a penalty determined under paragraph (d)(2) of this section for each month, or fraction thereof, during which such failure continues (but not to exceed 5 months), unless it is shown that such failure was due to reasonable cause.

(2) For purposes of paragraph (d)(1) of this section, the amount of penalty for any month is \$25, multiplied by the number of persons who were members of the pass-through entity at any time during the tax year, provided, however, that the maximum penalty for any taxable year shall not exceed \$10,000.

(3) The penalty prescribed by this subsection shall be assessed against and shall be payable by the pass-through entity and the deficiency and appeal procedures provided in §§ 521-526 of this title shall not apply; provided, however, that the Director shall mail written notice of such penalty to the pass-through entity, which may, within 60 days from the date of the mailing of such notice, institute a protest of such penalty to the Director, whose determination shall be final.

Section 4. Amend Section 534(i), Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(i) For tax periods beginning after December 31, 1994, ~~W~~with respect to any return, the amount of the addition to the tax under subsection (a) of this section shall be reduced by the amount of the addition to the tax under subsection (b) of this section for any month (or fraction thereof) to which an addition to the tax is applied under both subsections (a) and (b) of this section. ~~In any case described in former subsection (h) [now repealed] of this section, the amount of the addition to the tax under subsection (a) of this section shall not be reduced under the preceding sentence below the amount provided in former subsection (h) [now repealed] of this section.~~

Section 5. Amend Section 535(e), Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(e) For tax periods beginning after December 31, 1999, ~~A~~any person required under this title to collect, account for and pay over any tax imposed by this title, other than § 3002 and Chapters 51 and 52 of this title, who wilfully fails to collect or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the tax evaded, or not collected or not accounted for and paid over. No addition to tax under subsection (a) of this section shall be imposed for any action or failure to act to which this subsection applies. The term "person" as used in this subsection, includes an officer or employee of a corporation, or a member, officer or employee of a partnership pass-through entity, as defined in § 1601 of this title, who, as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Section 6. If any clause, sentence, section, provision or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, invalidate, or affect the remainder of this Act, which shall remain in full force and effect.

Approved July 24, 2013