

CHAPTER 79
FORMERLY
HOUSE SUBSTITUTE NO. 1

FOR

HOUSE BILL NO. 268

AN ACT TO AMEND CHAPTER 5, TITLE 30 OF THE DELAWARE CODE RELATING TO
PROCEDURE, ADMINISTRATION AND ENFORCEMENT.

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

Section 1. Amend Title 30 by adding the following section 546 as follows:

“§ 546. Voluntary Tax Compliance Initiative.

(a) Voluntary Tax Compliance Initiative: For the purpose of encouraging the voluntary disclosure and payment of taxes owed to this state, the Division of Revenue is hereby authorized and directed to establish a Voluntary Tax Compliance Initiative (the “Initiative”) for eligible taxes, as provided in this section.

(b) Waiver of Penalty and Interest; limitation: If, during the term of the Initiative, a taxpayer

(1) files a voluntary tax return or returns and pays the eligible taxes reported due, or enters an installment arrangement acceptable to the Director for payment of the eligible taxes reported due , or

(2) pays eligible taxes the assessment of which is final before the date of commencement of the Initiative, then:

A. the Director shall waive penalty, interest and other collection fees that may otherwise be assessed on such eligible taxes, and

B. the Director shall not assess any tax, interest or penalty for any voluntary tax return reporting eligible taxes under the Initiative for tax periods before January 1, 2004.

(c) Limitation on Initiative: The Initiative shall be limited to taxpayers who, between September 1, 2009, and October 30, 2009:

(1) file voluntary tax returns and

A. pay eligible taxes reported on those returns or

B. enter into payment plans to pay eligible taxes reported on those returns before June 30, 2010, or

(2) pay eligible taxes the assessment of which is final before September 1, 2009 or enter into payment plans to pay such eligible taxes before June 30, 2010.

(d) Definitions: As used in this section,

(1) “eligible taxes” shall include the following taxes (and additions to tax) that were due for any tax period ending before January 1, 2009 and unpaid as of September 1, 2009:

A. Personal income tax levied pursuant to Chapter 11 of Title 30 of the Delaware Statutes;

B. Gift tax levied pursuant to Chapter 14 of Title 30 of the Delaware Statutes;

C. Estate tax levied pursuant to Chapter 15 of Title 30 of the Delaware Statutes;

D. income tax on estates and trusts levied pursuant to Chapter 16 of Title 30 of the Delaware Statutes;

E. Corporation income tax levied pursuant to Chapter 19 of Title 30 of the Delaware Statutes;

F. Occupational license fees and tax levied pursuant to Chapter 23 of Title 30 of the Delaware Statutes;

G. Contractors’ license fees and tax levied pursuant to Chapter 25 of Title 30 of the Delaware Statutes;

H. Manufacturers’ license fees and tax levied pursuant to Chapter 27 of Title 30 of the Delaware Statutes;

I. Retail and Wholesale Merchants’ license fees and tax levied pursuant to Chapter 29 of Title 30 of the Delaware Statutes;

J. Use tax and gross receipts tax on leases of tangible personal property levied pursuant to Chapter 43 of Title 30 of the Delaware Statutes;

K. Tobacco product license fees and tax levied pursuant to Chapter 53 of Title 30 of the Delaware Statutes;

L. Realty Transfer tax levied pursuant to Chapter 54 of Title 30 of the Delaware Statutes;

M. Public Utilities tax levied pursuant to Chapter 55 of Title 30 of the Delaware Statutes; and

N. Lodging tax levied pursuant to Chapter 61 of Title 30 of the Delaware Statutes.

O. The above listed taxes due from partners, shareholders or members of pass-through-entities filing a voluntary tax return.

(2) "Initiative" means the Voluntary Tax Compliance Initiative enacted by this Section.

(3) "pay", "paid", or "payment of the eligible taxes" shall include an installment payment arrangement for payment of eligible taxes acceptable to the Director of Revenue without default by the taxpayer.

(4) "Voluntary tax return" means a complete and accurate tax return that is required to have been filed pursuant to Title 30 of the Delaware Code but where (a) the taxpayer did not file a timely return for the same tax type and tax period, and (b) the Division of Revenue has not notified taxpayer that it cannot verify that the taxpayer filed a return for the same tax type and tax period. A voluntary tax return filed pursuant to the Initiative shall constitute an admission by the taxpayer that it was not filed on or before its due date and that there exists no reasonable cause therefore.

(e) Taxpayer default: If any eligible tax, or any part thereof, is not paid during the term of the Initiative or if any installment arrangement for payment of eligible taxes acceptable to the Director of Revenue is not executed during the term of the Initiative and paid on or before June 30, 2010, penalty and interest equal to the amount of delinquent penalty and interest imposed by the applicable sections of Title 30 for nonpayment of the tax shall be added thereto and deemed payable without protest.

(f) The Division of Revenue is authorized, notwithstanding the provisions of any other Delaware Statute, to (i) expend for the purpose of funding the agreements described in the next paragraph, the necessary available funds from the special fund established under the Finance section of the Epilogue of House Bill No. 25, which constitutes the Fiscal Year 2010 Operating Budget, for purposes of contracting and/or employing personnel for the collection of delinquent State taxes and other debts that the Division of Revenue has undertaken to collect, and (ii), enter into agreements with third parties to publicly advertise, assist in the collection of eligible taxes, and administer the Voluntary Tax Compliance Initiative under which contingency and other fees may be payable to such third parties.

(g) Ten percent (10%) of the funds collected, after expenditures attributable to section 1.(f), shall be transferred into the fund defined in section 1.(f)(i) to provide for personnel costs for the audit of businesses or persons taxable under the supervision of the Division.

(h) Regulations.

(1) The General Assembly finds that there is a need to implement the Initiative on September 1, 2009 and recognizes that this timetable does not allow the Director to observe the normal rule-making procedures in the Administrative Procedures Act, 29 *Del. C.* §§10101 *et seq.* Accordingly, the General Assembly has determined to waive the rule-making procedures in the Administrative Procedures Act with respect to regulations governing the Initiative and to allow publication of regulations governing the Initiative in final form in the initial instance in the Register of Regulations.

(2) The Director is authorized:

A. to make all regulations consistent with the provisions of this Act that he deems necessary to implement the provisions of the Act without complying with the provisions of Subchapter II of Chapter 101 of Title 29 of the Delaware Code, but subject to 29 *Del. C.* §10141 governing judicial review of such regulations and,

B. to publish in the Register of Regulations all regulations made in accordance with paragraph a. of this subsection as final official regulations without having first published such regulations in proposed form, notwithstanding the provisions of Subchapter III of Chapter 11 of Title 29 of the Delaware Code or any rules or regulations promulgated pursuant to that subchapter."

Section 2. Amend § 534(a), Title 30 of the Delaware Code by deleting the punctuation and words " , not exceeding 50% in the aggregate".

Section 3. Amend § 534(j), Title 30 of the Delaware Code by deleting the words and punctuation “and by substituting “75%” for “50%””.

Section 4. Amend § 540(b)(2) of Title 30 of the Delaware Code by striking the phrase following the word “date” and ending with and including the phrase “, to” and replacing that phrase with the phrase “on which a claim for credit or refund (or an amended return claiming a credit or refund) is filed”.

Section 5. Amend § 504(b)(2) of Title 30 of the Delaware Code by striking the words following the word “taken”.

Section 6. Amend § 504(b) of Title 30 of the Delaware Code by deleting subsection (3) in its entirety.

Section 7. Sections 4-6 shall be effective for tax years beginning after December 31, 2009.

Approved July 01, 2009