



H.B. 248

123rd General Assembly
(As Introduced)

Reps. Barnes, Ford, Callender, Pringle, Sykes, Opfer, Smith, D. Miller, Patton, Jerse, Flannery, Allen, R. Miller, Netzley, Jacobson, Hartnett

BILL SUMMARY

- Grants taxpayers a six-month tax amnesty, whereby they may pay previously unpaid tax debts without paying the penalty normally assessed for unpaid taxes.
- The amnesty applies to personal income taxes, state sales and use taxes, and corporation franchise taxes that were unpaid for periods ending before 1999.
- Proceeds from the amnesty are to be paid to school districts with less-than-average per-pupil expenditures.

CONTENT AND OPERATION

Amnesty for unpaid taxes

Affected taxes, taxpayers

(Section 1(A)(1), (2), (6), and (7))

The bill allows taxpayers that owe certain outstanding state taxes to pay those taxes without having to pay associated penalties and, in some cases, interest. The affected taxes are the personal income tax, the state sales and use tax, and the corporation franchise tax. Taxpayers are given a little more than six months from the bill's effective date to pay the taxes in order to qualify for the amnesty; taxpayers must apply for the amnesty by the end of the sixth month that begins after the bill takes effect (thus, if the bill took effect in September 1999, the amnesty would end on March 31, 2000).

To be forgiven under the amnesty, a penalty must have accrued to taxes that were payable for a tax return period ending on or before December 31, 1998. (A

tax return period is defined as a period for which taxes are paid: a taxpayer's taxable year in the case of the income tax, the tax year in the case of the corporation franchise tax, and usually a month in the case of the sales and use tax.) The taxes must have been unreported, underreported, or otherwise unpaid or overdue.

The amnesty is not available for penalties accruing to taxes under the following circumstances (determined as of the bill's effective date):

- An assessment notice has been issued to the taxpayer;
- A final administrative determination has been made;
- A civil action or criminal prosecution has begun.

The taxpayers who may apply for amnesty are, in the case of the income tax, individuals, estates, certain pass-through entities, and employers required to withhold tax; in the case of the corporation franchise tax, corporations (including certain pass-through entities in which corporations invest); and, in the case of the sales and use tax, consumers or vendors.

Penalties and some interest forgiven

(Section 1(A)(3), (4), and (5))

Penalties and some interest are to be forgiven under the bill if the unpaid taxes are paid under the terms of the amnesty. Interest is forgiven to the extent that it exceeds 15% of the amount of unpaid taxes ("excess interest"). The taxpayer must pay any interest that does not exceed 15% of the tax due.

Currently, interest accrues at an annual rate of three percentage points above the current yield on short-term marketable U.S. government securities, as determined annually by the Tax Commissioner (currently 8%). Under current law, penalties are assessed in various amounts, depending on the circumstances of the nonpayment or late payment, as follows:

- For not filing required franchise or income tax reports, \$50 per month (up to \$500) or 5% per month of the tax due, whichever is greater;
- For late franchise or income tax payments, double the interest charge;
- For filing frivolous franchise or income tax reports, \$500;

- For fraudulent evasion of payment or reporting of franchise or income tax, \$1,000 or 100% of the tax, whichever is greater;
- For employers not paying income tax, double the interest charge plus 10% of the amount due;
- For withholding income tax from employees but not paying the taxes, 50% of the amount due;
- For collecting but not paying sales and use tax, or not filing a return, 50% of the amount due;
- For other late sales tax payments, 15%.

Protection from collection remedies

(Section 1(C))

If a taxpayer receives amnesty, no assessment may be issued and no civil proceedings or criminal prosecutions may be brought against the taxpayer with respect to the taxes and interest paid under the amnesty.

Application

(Section 1(B)(1) and (2))

In addition to paying the tax and interest, a taxpayer must file an application with the Tax Commissioner to receive the amnesty. The Tax Commissioner must supply the application forms. The Tax Commissioner may require applicants to file the customary tax returns and reports, including amended returns, in addition to the application.

Installment payments; compromised claims

(Section 1(B)(3))

Some taxpayers granted amnesty may be allowed to pay the unpaid taxes and excess interest in installments over a period of time. In order to pay the taxes in installments, the Tax Commissioner must determine that an undue hardship would be placed on the taxpayer if all of the tax and excess interest were to be collected at once. The taxpayer and the Tax Commissioner must enter into an agreement setting forth the number and amount of installments and the period over which the installment must be paid, but the period must end on or before June 30, 2001. Additional interest charged at the customary rate while the installments are

being paid. If a taxpayer misses an installment payment, all of the taxes, penalties, and interest owed by the taxpayer (including sums that were forgiven) become payable immediately; the taxpayer also loses the protection from collection remedies.

The Tax Commissioner also is authorized to compromise tax debts of taxpayers that apply for the amnesty, but only if the Tax Commissioner determines that the taxpayer's ability to pay may jeopardize collection of the entire amount owed. Under current law, the Tax Commissioner may exercise "the authority provided by law relative to consenting to the compromise and settlement of tax claims." (Sec. 5703.05(C).) With respect to corporation franchise and personal income taxes particularly, the Attorney General is authorized to compromise tax claims with the Tax Commissioner's consent. (Secs. 5733.25 and 5747.451.)

Publicizing the amnesty

(Section 1(E))

The bill requires the Tax Commissioner to do anything necessary to carry out the tax amnesty, including publicizing the benefits of the amnesty and how the proceeds will be used. The publicity must be conducted in a manner "reasonably calculated to generate the greatest amount of revenue and reach the greatest number of persons in all communities."

Use of amnesty proceeds

(Section 1(D))

All of the money collected under the amnesty is to be paid into the Tax Amnesty Fund the bill creates in the state treasury, and distributed to school districts with lower-than-average per-pupil expenditure (current expense expenditures only). The money must be distributed on a per-pupil basis.¹ The Director of Budget and Management must distribute the money, and the Department of Education and Superintendent of Public Instruction must determine which school districts are entitled to the money, and provide any information needed for the Director to distribute the money.

¹ *Although the title of the bill indicates that the intent is for school districts receiving the money to spend it on education technology, the bill's text does not specifically restrict how the money must be spent. A pending amendment will conform the bill's text to the title.*

COMMENT

Forgiving tax debts of delinquent taxpayers has been found to be unconstitutional under some circumstances. In *Perk v. Euclid*, 17 Ohio St.2d 4 (1969), the Ohio Supreme Court ruled unconstitutional a statute forgiving delinquent property taxes charged against property that was eligible for tax exemption but did not qualify because an application for exemption was never filed. The statute was determined to discriminate against taxpayers that were not delinquent and to be unconstitutionally retroactive. In the words of the court:

A statute which confers special benefits upon delinquent taxpayers not equally available to nondelinquent taxpayers violates Section 2 of Article I of the Constitution of Ohio [the state's equal protection guarantee], and is therefore void and of no effect." [citing *State, ex rel. Hostetter, v. Hunt*, 132 Ohio St. 568]

It is not clear whether the court's reasoning would be applied to the amnesty proposed by the bill. Like any legislation, the bill is presumed to be constitutional, and, generally, the burden of proving that an enactment is unconstitutional is borne by the party challenging the enactment. See, e.g., *State, ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142 (1955).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-16-99	p. 306

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