



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE
TAX RULING 82 -3

July 12, 1982

- New Legislation Relating to Penalties and Other Matters

House Bill Nos. 630 thru 639, inclusive, adopted by the 131st General Assembly and approved by the Governor on June 29, 1982, amend Chapter 11, Title 30 (relating to personal income tax), Chapter 14, Title 30 (relating to gift tax), Chapter 19, Title 30 (relating to corporation income tax), Chapter 21, Title 30 (relating to business license/gross receipts tax), Chapter 63, Title 30 (relating to public accommodations tax), and Chapter 11, Title 12 (relating to the escheat of abandoned property). With the exception of House Bill No. 636 (gift tax), all amendments are effective as of July 1, 1982, and, in general, will apply to returns due after July 1, 1982. House Bill No. 636 is effective as of January 1, 1982. The changes made by these Bills are described below.

CHAPTER 11, TITLE 30. - PERSONAL INCOME TAX

House Bill No. 637, Chap. 345, Vol. 63, Laws of Del., amends Section 1194 (a), 30 Del. C., by reducing the penalty imposed for late filing of returns from 10% per month to 5% per month, but retains the present limitation of a maximum penalty of 50% of the amount of the tax liability. Under this amendment, a taxpayer who files his return two months late will be subject to a penalty of 10% of the amount of tax due, rather than 20%. The maximum penalty of 50% would not be reached until the return is 10 months late.

House Bill No. 637, also amends Section 1194 by adding a new subsection (b) to impose an addition to the tax of $\frac{1}{2}$ % per month (not to exceed 25%) of the net tax liability due for failure to pay (in whole or in part) the tax liability shown to be due on a timely filed return. This $\frac{1}{2}$ % per month penalty is in addition to the ordinary interest charge of 1% per month imposed under present law for late payment.

House Bill No. 637 also amends Section 1194 by adding a new subsection (c) to impose a penalty against any partnership for failure to file a partnership return or failure to furnish the information on such return required by Section 1174, 30 Del. C. The amount of the penalty imposed for each month

such failure continues is the product of \$25.00 times the number of partners during any part of the taxable year, but limited to a maximum of 5 months.

House Bill No. 632, Chap. 292, Vol. 63, Laws of Del., amends Section 1195 (a), relating to the negligence penalty, by reducing the penalty imposed where any part of a deficiency is due to negligence from 25% to 10% of the amount of the deficiency.

House Bill No. 632 also amends Section 1195 (c) by reducing the penalty imposed for underpayment of estimated tax from 3% per month to $1\frac{1}{2}\%$ per month for the period of the underpayment.

House Bill No. 632 also amends Section 1195 by adding a new subsection (d) to impose a late filing penalty of $\frac{1}{2}\%$ per month, not to exceed a maximum of 5%, on employers who file timely withholding tax returns but fail to pay the tax due. This will be in addition to the ordinary interest charge of 1% per month imposed under present law.

CHAPTER 14, TITLE 30 - GIFT TAX

The Economic Recovery Tax Act of 1981 changed the Federal gift tax return filing requirements from a quarterly to an annual basis effective January 1, 1982. House Bill No. 636, Chap. 296, Vol. 63, Laws of Del., amends Chapter 14, 30 Del. C., relating to the gift tax to conform Delaware gift tax return filing requirements with Federal law.

The amendment is effective with respect to gifts made after December 31, 1981. Hence, Delaware gift tax returns for taxable gifts made on or after January 1, 1982, shall be due on April 15 following the close of the calendar year. However, if the donor dies during the year, the gift tax return shall be due on the date the inheritance tax return under Chapter 13, 30 Del. C., is due, viz, nine months after the date of death, plus any extensions of time granted.

In addition, House Bill No. 636 incorporates into Chapter 14 some of the personal income tax procedural, administrative, and enforcement provisions contained in Chapter 11, 30 Del. C., relating to the assessment of deficiencies, penalties for late filed returns, the filing of claims for refund, etc.

CHAPTER 19, TITLE 30 - CORPORATION INCOME TAX

House Bill No. 633, Chap. 293, Vol. 63, Laws of Del., amends Section 1909 (b), 30 Del. C., by increasing the penalty imposed on corporations where it is determined that any part of a deficiency is due to negligence, from 5% to 10% of the amount of the deficiency.

House Bill No. 633 also amends Section 1909 (d) (1), 30 Del. C., by increasing the addition to the tax in the case of an underpayment of estimated tax from 1% to $1\frac{1}{2}$ % per month of the amount of the underpayment for the period of the underpayment.

House Bill No. 633 also amends Section 1912 (d), 30 Del. C., by reducing the penalty for late filing of returns from 10% per month to 5% per month of the amount of the tax liability, limited to a maximum penalty of 50%.

House Bill No. 633 also amends Section 1912 by adding a new subsection (f) to impose an addition to the tax of $\frac{1}{2}$ % per month (not to exceed 25%) of the net tax liability due for failure to pay (in whole or in part) the tax liability shown to be due on a timely filed return. This $\frac{1}{2}$ % per month penalty is in addition to the ordinary interest charge of 1% per month imposed under present law.

House Bill No. 635, Chap. 295, Vol. 63, Laws of Del., amends Section 1911 (a), 30 Del. C., to provide that any overpayment of corporation income tax may be offset and applied against any unpaid tax liability of the same taxpayer, and the balance of the overpayment, if any, refunded.

House Bill No. 635 also amends Section 1903 (b) (6), 30 Del. C., to make it clear that a loss from operations of a multistate corporation doing business in Delaware must be apportioned under the three-factor statutory formula (property, wages and gross receipts), and may not be used in its entirety to offset income specifically allocated to Delaware under Section 1903 (b) (1) thru (5), 30 Del. C. This amendment clarifies present law.

CHAPTER 21, TITLE 30 - BUSINESS LICENSE & GROSS RECEIPTS TAX

House Bill No. 638, Chap. 297, Vol. 63, Laws of Del., amends Section 2015, 30 Del. C., by reducing the maximum penalty for late filing of license tax returns from 5% per month up to a maximum penalty of 100%,

to 5% per month up to a maximum penalty of 50% of the amount of tax liability.

House Bill No. 638 also amends Section 2105 by adding a new subsection (c) to impose an addition to the tax of $\frac{1}{2}\%$ per month (not to exceed 25%) of the net tax liability due for failure to pay (in whole or in part) the tax liability shown to be due on a timely filed return. This $\frac{1}{2}\%$ penalty is in addition to the ordinary interest charge of 1% per month imposed under present law.

House Bill No. 638 also amends Section 2105 by adding a new subsection (d) to impose a negligence penalty of 10% of the amount of deficiency in tax where any part of the deficiency is due to negligence, and by adding a new subsection (e) to impose a fraud penalty of 100% of the amount of a deficiency where any part of the deficiency is due to fraud. If imposed, the fraud penalty shall be in lieu of the late filing and negligence penalties.

House Bill No. 639, Chap. 298, Vol. 63, Laws of Del., amends Chap. 21, 30 Del. C., by adding new Sections 2122 and 2123 to provide statutory procedures for the Division of Revenue to obtain and enforce judgments against taxpayers who are delinquent in their business or occupational license tax liabilities in the same manner as is provided under present law for personal income tax and corporation income tax purposes.

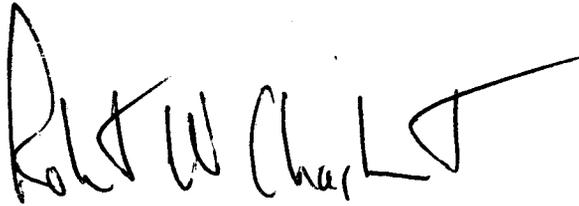
CHAPTER 61, TITLE 30 - PUBLIC ACCOMMODATIONS TAX

House Bill No. 631, Chap. 291, Vol. 63, Laws of Del., adds a new Section 6105, 30 Del. C., to impose a penalty of 5% per month, not to exceed a maximum of 50%, for the failure of any owner to file a return or pay the 6% tax imposed under Chap. 63 on the occupancy of hotel, motel and tourist rooms. Under present law the only penalty imposed for such failure is an interest charge of 1% per month for any unpaid tax liability.

House Bill No. 634, Chap. 294, Vol. 63, Laws of Del., amend Chap. 63, 30 Del. C., by adding new Sections 6106 and 6107 to provide a three-year statutory period of limitations in which to make deficiency assessments, and to provide administrative procedures for filing protests and appealing such assessments, and to provide a requirement for notice of demand to be issued by the Division of Revenue prior to seeking a judgment for any delinquent tax liability.

CHAPTER 11, TITLE 30 - ESCHEAT OF ABANDONED PROPERTY

House Bill No. 630, Chap. 311, Vol. 63, Laws of Del., amends Sections 1152, 1192 and 1207 (a), 12 Del. C., relating to reports of abandoned property by banking organizations, life insurance companies and general corporations. The amendments make uniform the penalty for late filing of reports to the State Escheator (Secretary of Finance). The amendments provide that a penalty of \$25.00 per day, not to exceed a maximum penalty of \$2,500, shall be imposed for each day the report is late filed, unless reasonable cause is shown for such failure to file. In addition, it is provided that in no case shall the penalty imposed exceed 100% of the amount required to be reported or paid to the State Escheator.



Robert W. Chastant
Director of Revenue

RRS/mrs