

APPENDIX H. TAXPAYERS' BILL OF RIGHTS

Deletions are indicated are in [brackets], additions by underlining

P.L.1992, CHAPTER 175, approved December 10, 1992

Assembly Committee Substitute (First Reprint) for

1992 Assembly No. 385 and 1474

AN ACT concerning the payments, penalties, appeals and administration of certain State tax liabilities to provide a Taxpayers' Bill of Rights, amending, supplementing and repealing parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.54:48-2 is amended to read as follows:

54:48-2. As used in this subtitle:

"Commissioner" means the Director of the Division of Taxation in the Department of the Treasury.

"Department" means the Division of Taxation in the Department of the Treasury.

"Director" means the Director of the Division of Taxation.

"Prime rate" means the average predominant prime rate, as determined by the Board of Governors of the Federal Reserve System, quoted by commercial banks to large businesses as of the first business day of the calendar quarter within which the payment was due; except that as to the calculation of interest accruing on and after the July 1 next following enactment of P.L. , c. (now pending before the Legislature as this bill) "prime rate" means that rate quoted as of December first of the calendar year immediately preceding the calendar year in which the payment was due, provided however, that if the director determines that the prime rate quoted by commercial banks to large businesses varies by more than one percentage point from the rate otherwise determined, the director shall redetermine the prime rate to be that quoted prime rate for subsequent calendar quarters of the calendar year in which payments become due.

"State tax" means any tax which is payable to or collectible by the director, and "State tax law" means any law which levies or imposes a State tax as herein defined.

"Taxpayer" means any person owing or liable to pay any State tax or any person deemed by the director to be so owing or liable. (cf: P.L.1987, c.76, s.1)

2. R.S.54:49-4 is amended to read as follows:

54:49-4. In addition thereto any taxpayer failing to file a return with the director within the time prescribed under the act imposing such tax shall be liable to a late filing penalty of \$100.00 for each month or fraction thereof that such return is delinquent, plus a penalty of 5% per month or fraction thereof of the total tax liability not to exceed 25% of such tax liability. [If any tax be not paid within the time

APPENDIX H

prescribed under the act imposing such tax, there shall be added to the amount of the tax a sum equivalent to 5% thereof, as a penalty] Unless any part of any underpayment of tax required to be shown on a return or report is shown to be due to reasonable cause, there shall be added to the tax an amount equal to 5% of the underpayment.

(cf: P.L.1987, c.76, s.3)

3. R.S.54:49-6 is amended to read as follows:

54:49-6. a. After a return or report is filed under the provisions of any State tax law, the director shall cause the same to be examined and may make such further audit or investigation as he may deem necessary, and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under such law, he shall assess the additional taxes, penalties [of 5% of the tax] , if any, pursuant to any State tax law or pursuant to this subtitle, and interest at the rate of [five] three percentage points above the prime rate [, to be compounded daily from the date the tax was originally due to the date of payment,] due the State from such taxpayer assessed for each month or fraction thereof, compounded annually at the end of each year, from the date the tax was originally due until the date of actual payment, give notice of such assessment to the taxpayer, and make demand upon him for payment.

b. No assessment of additional tax shall be made after the expiration of more than four years from the date of the filing of a return; provided, that in the case of a false or fraudulent return with intent to evade tax, or failure to file a return, the tax may be assessed at any time. If a shorter time for the assessment of additional tax is fixed by the law imposing the tax, the shorter time shall govern. If, before the expiration of the period prescribed herein for the assessment of additional tax, a taxpayer consents in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. For purposes of this subsection, a return filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(cf: P.L.1987, c.76, s.4) **Bold faced underlined material added by L. 1993, c. 331 s. 3, retroactive to July 1, 1993.**

4. R.S.54:49-11 is amended to read as follows:

54:49-11. a. If the failure to pay any such tax when due is explained to the satisfaction of the director, he may remit or waive the payment of the whole or any part of any penalty [for deficiency assessments made pursuant to R.S.54:49-6. In all other cases the director] and may remit or waive the payment [of any part of any penalty and may remit or waive the payment] of any interest charge in excess of the rate of three percentage points above the prime rate [compounded dai-

ly] including any such penalty or interest with respect to deficiency assessments made pursuant to R.S.54:49-6.

b. The director shall waive the payment of any part of any penalty or any part of any interest attributable to the taxpayer's reasonable reliance on erroneous advice furnished to the taxpayer in writing by an employee of the Division of Taxation acting in the employee's official capacity, provided that the penalty or interest did not result from a failure of the taxpayer to provide adequate or accurate information.
(cf: P.L.1987, c.76, s.6)

5. R.S.54:49-14 is amended to read as follows:

54:49-14. a. Any taxpayer, at any time within [two] four years after the payment of any original or additional tax assessed against him, unless a shorter limit is fixed by the law imposing the tax, may file with the [commissioner] director a claim under oath for refund, in such form as the [commissioner] director may prescribe, stating the grounds therefor, but no claim for refund shall be required or permitted to be filed with respect to a tax paid, after protest has been filed with the [commissioner] director or after proceedings on appeal have been commenced as provided in this subtitle, until such protest or appeal has been finally determined. The signing of an agreement by the taxpayer and the director extending the period for assessment shall likewise extend the period for filing a claim for refund.

b. Each taxpayer shall file a separate refund claim. A refund claim on behalf of a class is not permitted.

c. If a tax is declared to be discriminatory in a final judicial decision from which all appeals have been exhausted, the director may, within the director's sole discretion, refund or credit only the discriminatory portion of the tax.

(cf: R.S.54:49-14)

6. R.S.54:49-15 is amended to read as follows:

54:49-15. If upon examination of such claim for refund, it shall be determined by the [commissioner] director that there has been an overpayment of tax, the amount of such overpayment and the interest on the overpayment if any, shall be credited against any liability of the taxpayer under any state tax law and if there be no such liability the taxpayer shall be entitled to a refund of the tax so overpaid and the interest on the overpayment, if any. If the [commissioner] director shall reject the claim for refund in whole or in part, [he] the director shall make an order accordingly and serve a notice upon the taxpayer.
(cf: R.S.54:49-15)

7. (54:49-15.1) For tax paid with respect to reports or returns due on and after the first day of the sixth month following the July 1 next following enactment of this section, interest shall be allowed and paid on every overpayment of tax at a rate determined by the director to be equal to the prime rate, **determined for each month or fraction thereof, compounded annually at the end of each year, from the**

APPENDIX H

date that such interest commences to accrue to the date of refund.

Interest shall commence to accrue on the later of the date of the filing by the taxpayer of a claim for refund or requested adjustment, the date of the payment of the tax, or the due date of the report or the return thereof; but no interest shall be allowed or paid on an overpayment of less than \$1.00, nor upon any overpayment refunded within 6 months after the last date prescribed, or permitted by extension of time, for filing the return or within 6 months after the return is filed, whichever is later.

Bold faced underlined material added by L. 1993, c. 331 s. 4, retroactive to July 1, 1993.

8. (54:48-6) The Director of the Division of Taxation shall prepare statements that set forth in simple and nontechnical terms:

a. the procedural and substantive rights of a taxpayer under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., including information and notice standards, rights of representation and confrontation, and the standards for allowing closing agreements and compromises; and the obligations of the Division of Taxation under that law, including obligations of explanation, communication and confidentiality;

b. the procedures and time limits to protest an assessment or decision of the director;

c. the procedures and time limits to appeal a final decision of the director;

d. the procedures for making a claim for refund under that law, and under any other law or regulation which may prohibit the application of the refund provisions of that law; and

e. the procedures which the director may use in determining State tax liability, including the director's right to verify taxes through examination of records, hearings, and subpoena powers, and the procedures which the director may use in collecting a State tax liability, including deficiency assessment, arbitrary assessment, penalties and interest, liens, levies and criminal sanctions.

9. (54:50-6.1) a. All notice of assessment related to final audit determination and "Notice and Demand for Payment of Tax" letters will be sent by registered or certified mail.

b. All taxpayers have the right to ask officers and employees of the Division of Taxation questions about:

(1) the State tax implications of any specific situation;

(2) the amount of any State tax liability and how it has been determined;

(3) any notice of underpayment or overpayment sent by the Division; and

(4) their responsibilities and rights as taxpayers.

When taxpayers contact the officers and employees of the Division of Taxation at any location, whether in person, by telephone or by

letter, the Division of Taxation personnel will accurately answer their questions within a reasonable time period.

10. **(54:50-2.2)** An employee of the Division of Taxation, in connection with an in-person interview with a taxpayer relating to the determination or collection of tax:

a. shall, upon advance request of the taxpayer, allow the taxpayer to make a recording of the interview with the taxpayer's equipment and at the taxpayer's expense, provided however that the Division of Taxation shall have the same right of recording;

b. may, upon advance notice to the taxpayer, make a recording of the interview; provided however, that the employee shall provide the taxpayer with a copy of the recording if the taxpayer provides reimbursement for the cost of the copy; and

c. shall, before or at the initial interview, provide to the taxpayer an explanation of the audit process and the taxpayer's rights under the audit process in the case of an interview relating to the determination of a tax and provide to the taxpayer an explanation of the collection process and the taxpayer's rights under the collection process in the case of an interview relating to the collection of a tax, including the taxpayer's right to consult with the taxpayer's attorney or accountant

This section shall not apply to investigations relating to the integrity of a division employee or to criminal investigations.

11. **(54:51A-22)** a. A prevailing taxpayer in a court proceeding in connection with the determination, collection or refund of any tax, penalty or interest may be awarded a judgment or settlement for the reasonable litigation costs, not to exceed \$15,000, incurred in the proceeding, based upon:

- (1) the reasonable expenses of expert witnesses,
- (2) the reasonable costs of studies, reports or tests, and
- (3) the reasonable fees of attorneys, not to exceed \$75 per hour unless by special determination of the court of the existence of a special factor.

b. An award under subsection a. shall be made only for the costs allocable to the State, and not to any other party.

c. No award under subsection a. shall be made with respect to any portion of the proceedings during which the prevailing taxpayer has unreasonably protracted the proceedings.

d. Whenever it appears to the court that proceedings have been instituted or maintained by the taxpayer primarily for delay, that the taxpayer's position in the proceedings are without grounds, or that the taxpayer unreasonably failed to pursue administrative remedies, the State may be awarded a judgment or settlement for its reasonable litigation costs, not to exceed \$15,000, incurred in the proceedings.

e. For the purposes of this section, "prevailing taxpayer" means a taxpayer that establishes that the position of the State was without rea-

APPENDIX H

sonable basis in fact or law. The determination of whether a taxpayer is a prevailing taxpayer is to be determined by the court.

12. **(54:51A-23)** If an employee of the Division of Taxation knowingly [or recklessly] disregards any tax law, any provision of this subtitle, or any regulation promulgated thereunder, in the collection of any tax; or if an employee of the Division of Taxation knowingly, recklessly or negligently fails to release a lien against or bond on a taxpayer's property, then: the taxpayer may, within two years from the date the taxpayer could reasonably discover the actions of the employee or director, bring an action for damages against the State in the tax court, provided that the damages shall be limited to the actual direct economic damages suffered by the taxpayer as a proximate result of the actions of the employee or director, plus costs, reduced by the amount of such damages and costs as could reasonably have been mitigated by the taxpayer. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

13. **(54:49-3.1)** Except as another payment method may be specified by law, a tax return, report, notice, petition, protest, claim or other document to be filed or remittance containing payment of tax, required to be filed within a prescribed period, or on or before a prescribed date, under the provisions of any State tax that, after the period or the date, is delivered by United States mail to the director, bureau, office, officer or person with which or with whom the document is required to be filed shall be deemed to be delivered on the date of the United States postmark stamped on the envelope. This shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of the document, determined with regard to any extension granted for filing, and the document was deposited in the mail, postage prepaid, properly addressed to the director, bureau, office, officer or person with which or with whom the document is required to be filed. If any document is sent by United States registered or certified mail, such registration or certification shall be prima facie evidence that the document was delivered to the director, bureau, office, officer or person to which or to whom addressed. This section shall also apply to postmarks not made by the United States Postal Service to the extent the Director of the Division of Taxation in the Department of the Treasury may prescribe.

14. R.S.54:49-18 is amended to read as follows:

54:49-18. a. If any taxpayer shall be aggrieved by any finding or assessment of the [commissioner] director, he may, within [thirty] 90 days [of] after the giving of the notice of assessment or finding, file a protest in writing signed by himself or his duly authorized agent, certified to be true, which [shall be under oath, and] shall set forth the reason therefor, and may request a hearing. Thereafter the [commissioner] director shall grant a hearing to the taxpayer, if the same shall be requested [. He may make an order] , and shall make a final determina-

tion confirming, modifying or vacating any such finding or assessment. The filing of [any such] a protest shall [not abate penalties for nonpayment, nor shall it] stay the right of the [commissioner] director to collect the tax in any manner [herein provided, unless] if the taxpayer shall furnish security of the kind and in the amount [satisfactory to the commissioner] determined pursuant to subsection b. of this section until 90 days after final determination by the director. The time for appeal [or review shall not be extended by the filing of any protest unless a hearing is requested, and the time to appeal shall then be extended only for the period between the filing of the protest and the final determination thereon by the commissioner] to the Tax Court pursuant to subsection a. of R.S.54:51A-14, enacted pursuant to section 1 of P.L.1983, c.45, shall commence from the date of the final determination by the director.

b. Except in the case of an arbitrary assessment pursuant to R.S.54:49-5 or R.S.54:49-7, no security shall be required for an amount in controversy of less than \$10,000. Contested assessments of \$10,000 or more shall not require security unless the director determines that there is a substantial risk of the taxpayer's failure or inability to pay a liability, based on the compliance history and financial condition of the taxpayer.

(cf: R.S.54:49-18)

15. R.S.54:50-6 is amended to read as follows:

54:50-6. a. Any notice required to be given by the [commissioner] director pursuant to [this subtitle] the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., may be served personally or by mailing the same to the person for whom it is intended, addressed to such person at the address given in the last report filed by [him] that person pursuant to the provisions of [this subtitle] the State Uniform Procedure Law, or of any state tax law, or if no report has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it was addressed. A notice may at the prescription of the director include on its face a designation which shall identify the notice for purposes of communication.

b. An assessment notice pursuant to R.S.54:49-5, R.S.54:49-6 or R.S.54:49-7 shall contain the statements required pursuant to subsections a., b. and [f.] d. of section 8 of P.L. 1992, c.175 (C.54:48-6).

c. An assessment notice pursuant to R.S.54:49-5, R.S.54:49-6 or R.S.54:49-7 shall include a statement of the reason for the assessment sufficient to inform a reasonable lay person of the statutory requirements which in the opinion of the director require the assessment, the actions or omissions of the taxpayer which require the assessment, or the nature of the insufficient documentary evidence, if any, which has prompted the assessment; including:

APPENDIX H

(1) in the case of an underpayment or failure of payment, a statement of the corresponding alleged correct amount and correct date of payment; and

(2) in the case of a failure to file a return, a statement of the alleged required filing date.

d. A refund determination notice pursuant to R.S.54:49-15 shall include the statement[s] required pursuant to subsection[s **b., d. and f.**] c. of section 8 of P.L.1992, c.175 (C.54:48-6).

e. A final determination notice pursuant to R.S.54:49-18 shall include the statements required pursuant to subsections c. and [f.] e. of section 8 of P.L.1992, c.175 (C.54:48-6).

f. The lack of any statement otherwise required to be included with a notice pursuant to this section or the lack of any description otherwise required pursuant to subsection c. of this section shall not invalidate such notice.

(cf: R.S.54:50-6) **Bold faced underlined material amended by L. 1993, c. 331 s. 2, retroactive to July 1, 1993.**

16. R.S.54:51A-15 is amended to read as follows:

54:51A-15. Collection; bond; exception. a. Except as may otherwise be specifically provided, no complaint filed shall stay the collection of any tax or the enforcement thereof by entry of a judgment, unless [by order of the tax court and then, unless the tax court shall otherwise so direct, only after] security, if required pursuant to the standards and subject to the exceptions of subsection b. of R.S.54:49-18, approved by the Director of the Division of Taxation has been furnished to the Director of the Division of Taxation. [This subsection shall not apply to appeals with respect to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) and the "Alcoholic Beverage Wholesale Sales Tax Act," P.L.1980, c.62 (C.54:32C-1 et seq.).]

b. [Irrespective of any restrictions on the assessment and collection of deficiencies, with respect to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) and the "Alcoholic Beverage Wholesales Sales Tax Act," P.L.1980, c.62 (C.54:32C-1 et seq.), the Director of the Division of Taxation may assess a deficiency after the time provided for filing a complaint in the tax court has run, notwithstanding that a complaint in respect of the deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his complaint is made, has paid the deficiency, has deposited with the director the amount of the deficiency, or has filed with the director a bond, which may be a jeopardy bond, in the amount of the portion of the deficiency, including interest and other amounts, in respect of which the complaint is made and all costs and charges which may accrue against him in the prosecution of the proceeding, including costs of all appeals, and with surety approved by the tax court, conditioned upon the payment of the deficiency, including interest and other amounts, as finally determined, and the costs and charges. If as a result

of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the director is paid after the filing of the appeal bond, the bond shall, at the request of the taxpayer, be proportionately reduced] (Deleted by amendment, P.L. , c.).

c. [If an appeal is brought pursuant to section 31 of P.L.1941, c.291 (C.54:29A-31), by a taxpayer, the taxpayer shall only be required to pay to the State Treasurer the amount of the taxes then not in substantial controversy. If the taxpayer and the Attorney General are unable to agree on the amount of taxes then not in substantial controversy, the amount shall be determined by the tax court. Upon the payment of the amount of taxes then not in substantial controversy, the payment or collection of the remainder of the taxes shall be stayed until the final determination by the tax court] (Deleted by amendment, P.L. , c.).

d. Except as otherwise specifically provided in R.S.54:49-5 and R.S.54:49-7 and pursuant to subsection a. of this section, a complaint filed in the Tax Court shall stay the collection of the tax at issue therein and the enforcement thereof by entry of any judgment pursuant to R.S.54:49-12. A stay of collection of tax or enforcement thereof by entry of a judgment shall expire and be of no effect upon the entry of a judgment by the Tax Court determining that all or any part of the tax assessed is due and owing.

(cf: P.L.1983, c.45, s.1)

17. Section 7 of P.L.1975, c.387 (C.**54:53-7**) is amended to read as follows:

7. a. The Director of the Division of Taxation may compromise criminal liabilities and any civil liability arising under the tax laws of the State prior to reference of a case involving such liability to the Attorney General for prosecution or defense. Any such liability may be compromised only upon one or both of the following grounds:

[a.] (1) Doubt as to liability; or

[b.] (2) Doubt as to collectability.

No such liability shall be compromised if the liability has been established by a court of competent jurisdiction or is certain, and there is no reasonable doubt as to the ability of the State to collect the amounts owing with respect to such liability.

b. The Director of the Division of Taxation may compromise the time for payment of a liability arising under the tax laws of the State. The time for payment of a liability shall be compromised under this subsection only on the grounds that the equities of the taxpayer's liability indicate that a compromise would be in the interest of the State and that without such a compromise the taxpayer would experience extreme financial hardship. A delayed payment or installment payment compromise agreement shall include interest on the unpaid bal-

APPENDIX H

ance of the liability at the rate of three percentage points above the prime rate.

(cf: P.L.1975, c.387, s.7)

18. Section 9 of P.L.1975, c.387 (C.54:53-9) is amended to read as follows:

9. A compromise agreement shall relate to the entire liability of the taxpayer (including taxes, ad valorem penalties and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest or ad valorem penalties. Neither the taxpayer nor the State shall, upon the acceptance of an offer in compromise, be permitted to reopen the case except by reason of the following:

a. Falsification or concealment of assets by the taxpayer; [or]

b. Mutual mistake of a material fact sufficient to cause a contract to be set aside; or

c. The significant change in the financial condition of a taxpayer with which the director has entered into an agreement under subsection b. of section 7 of P.L.1975, c.387 (C.54:53-7).

However, acceptance of an offer in compromise of a civil liability shall not operate to remit a criminal liability, nor shall acceptance of a compromise of a criminal liability operate to remit a civil liability.

For the purpose of administering subsection c. of this section, the director may require a taxpayer to provide periodic statements of financial condition in such form as the director may prescribe. Action may be taken by the director under subsection c. only if the director gives notice to the taxpayer 30 days before the date of any action and the notice includes a statement of the reasons the director has for believing a significant change in the financial condition of the taxpayer has occurred.

(cf: P.L.1975, c.387, s.9)

19. Section 13 of P.L.1945, c.162 (C.54:10A-13) is amended to read as follows:

13. If the amount of the taxable income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in said taxable income, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, such taxpayer shall report such changed or corrected taxable income, or the results of such renegotiation, or such computation or recomputation, within 90 days after the final determination of such change or correction or renegotiation, or such computation or recomputation, or as required by the [commissioner] director, and shall concede the accuracy of such determination or state wherein it is

erroneous. Any taxpayer filing an amended return with such department shall also file within 90 days thereafter an amended report with the [commissioner] director. The periods of limitation to make deficiency assessments under R.S.54:49-6 and to file claims for refund under R.S.54:49-14 shall commence to run for additional four year periods from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue; provided, that the additional periods of limitation shall only be applicable to the increase or decrease in tax attributable to the adjustments in such changed or corrected taxable income.

(cf: P.L.1958, c.63, s.6)

20. Section 19 of P.L.1945, c.162 (C.54:10A-19) is amended to read as follows:

19. The director may grant a reasonable extension of time for the filing of returns or the payment of tax or both, under such rules and regulations as he shall prescribe, which rules and regulations may require the filing of a tentative return and the payment of an estimated tax. If the time for filing the return shall be extended, the payment of the portion of the tax remaining to be paid, if any, shall be postponed to the date fixed by the extension of the time for the filing of the return, but in every such case the corporation shall pay, in addition to the unpaid portion of the tax, interest thereon at the rate as provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., from the time when the return originally was required to be filed to the date of actual payment under the extension; provided, that if such unpaid portion of the tax is not paid within the time fixed under the extension, the interest on such unpaid portion shall be computed at the rate as provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., from the date the tax was originally due to the date of actual payment and if the [amount] amounts paid [at] up to and including the time of the filing of the tentative return [was] total less than the lesser of: 90% of the amount due; or for a taxpayer that had a preceding fiscal or calendar accounting year of 12 months and filed a return for that year showing a liability for tax, an amount equal to the tax computed at the rates applicable to the current fiscal or calendar accounting year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year, the taxpayer shall be liable for a penalty of 5% per month or fraction thereof on the amount of underpayment which shall be in addition to the interest charges provided above.

(cf: P.L.1987, c.76, s.51)

21. Section 10 of P.L.1947, c.50 (C.54:10A-19.1) is amended to read as follows:

10. (a) [After a final return in due form is filed, the commissioner shall cause the same to be examined and may make such further audit or investigation or reaudit as he may deem necessary, and if therefrom

APPENDIX H

he shall determine that there is a deficiency with respect to the payment of any tax due under this act, he shall assess or reassess the additional taxes, penalties and interest due the State, give notice of such assessment or reassessment to the taxpayer, and make demand upon him for payment. There shall be added to the amount of any deficiency assessment or reassessment interest at the rate as provided in the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised Statutes. If the commissioner is satisfied that the said deficiency was not due to fraud or evasion, he may remit or waive the payment of any interest charge as provided in the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised Statutes] (Deleted by amendment, P.L. , c.).
)).

(b) [Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than 5 years from the date of the filing of a return; provided, that where no return has been filed as provided by law, the tax may be assessed at any time. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period] (Deleted by amendment, P.L. , c.).

(c) [The director is authorized to enter into a written agreement with any taxpayer relating to the liability of such taxpayer in respect of any tax, fee, penalty or interest heretofore or hereafter imposed by this act, which agreement shall be final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(a) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of this State, and

(b) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, cancellation, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded] (Deleted by amendment, P.L. , c.).

(d) The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

(cf: P.L.1975, c.177, s.11)

22. Section 18 of P.L.1946, c.174 (C.54:10B-18) is amended to read as follows:**This section was repealed by L. 1993, c. 174, s. 1, effective July 7, 1993.**

18. The examination of returns, assessment of additional taxes, penalties and interest, administration, collection and enforcement of the tax imposed by this act shall be subject to the provisions of the State [tax uniform procedure law as therein provided (subtitle nine of

Title 54 of the Revised Statutes)] Tax Uniform Procedure Law, R.S.54:48-1 et seq.

(cf: P.L.1946, c.174, s.18)

23. Section 15 of P.L.1973, c.31 (C.54:10D-15) is amended to read as follows:

15. Change, correction or recomputation of amount of taxable income as returned to Federal Treasury Department; amended returns; report. If the amount of the taxable income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in said taxable income, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, such taxpayer shall report such changed or corrected taxable income, or the results of such renegotiation, or such computation or recomputation, within 90 days after the final determination of such change or correction or renegotiation, or such computation or recomputation, or as required by the director, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within 90 days thereafter an amended report with the director. The periods of limitation to make deficiency assessments under R.S.54:49-6 and to file claims for refund under R.S.54:49-14 shall commence to run for additional four year periods from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue; provided, that the additional periods of limitation shall be applicable to the increase or decrease in tax attributable to the adjustments in such changed or corrected taxable income.

(cf: P.L.1973, c.31, s.15)

24. Section 16 of P.L.1973, c.31 (C.54:10D-16) is amended to read as follows:

16. Deficiency assessment or reassessment; extension of period.
a. [After a final return in due form is filed, the director shall cause the same to be examined and may make such further audit or investigation or reaudit as he may deem necessary, and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under this act, he shall assess or reassess the additional taxes, penalties and interest due the State, give notice of such assessment or reassessment to the taxpayer, and make demand upon him for payment. There shall be added to the amount of any deficiency assessment or reassessment interest at the rate as provided in the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised Statutes. If the director is satisfied that the said deficiency was not due to fraud or evasion, he may remit or waive the payment of any interest charge as provided in the State Tax Uniform Procedure Law,

APPENDIX H

subtitle 9 of Title 54 of the Revised Statutes] (Deleted by amendment, P.L. , c.).

b. [Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than 5 years from the date of the filing of a return; provided, that where no return has been filed as provided by law, the tax may be assessed at any time. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period] (Deleted by amendment, P.L. , c.).

c. The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

(cf: P.L.1975, c.177, s.14)

25. Section 11 of P.L.1973, c.170 (C.54:10E-11) is amended to read as follows:

11. If the amount of the taxable income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in said taxable income, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, such taxpayer shall report such changed or corrected taxable income, or the results of such renegotiation, or such computation or recomputation, within 90 days after the final determination of such change or correction or renegotiation, or such computation or recomputation, or as required by the director, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within 90 days thereafter an amended report with the director. The periods of limitation to make deficiency assessments under R.S.54:49-6 and to file claims for refund under R.S.54:49-14 shall commence to run for additional four year periods from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue; provided, that the additional periods of limitation shall only be applicable to the increase or decrease in tax attributable to the adjustments in such changed or corrected taxable income.

(cf: P.L.1973, c.170, s.11)

26. Section 19 of P.L.1973, c.170 (C.54:10E-19) is amended to read as follows:

19. a. [After a final return in due form is filed, the director shall cause the same to be examined and may make such further audit or in-

vestigation or reaudit as he may deem necessary, and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under this act, he shall assess or reassess the additional taxes, penalties and interests due the State, give notice of such assessment or reassessment to the taxpayer, and make demand upon him for payment. There shall be added to the amount of any deficiency assessment or reassessment, interest at the rate as provided in the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised Statutes. If the director is satisfied that the said deficiency was not due to fraud or evasion, he may remit or waive the payment of any interest charge as provided in the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised Statutes] (Deleted by amendment, P.L. , c.).

b. [Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than 5 years from the date of the filing of a return; provided, that where no return has been filed as provided by law, the tax may be assessed at any time. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period] (Deleted by amendment, P.L. , c.).

c. After a final return in due form is filed for an accounting period under this act, the director may, within [5] four years of the date of filing such return, require the taxpayer to file a proper return under the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et seq.), and pay any additional tax due thereon, if he shall determine that the taxpayer was properly subject to tax under said Corporation Business Tax Act for such accounting period.

d. [The director is authorized to enter into a written agreement with any taxpayer relating to the liability of such taxpayer in respect of any tax, fee, penalty or interest heretofore or hereafter imposed by this act which agreement shall be final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee or agent of this State; and

(2) In any suit, action or proceeding, such agreement or any determination, assessment, collection, payment, cancellation, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded] (Deleted by amendment, P.L. , c.).

e. The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.
(cf: P.L.1975, c.177, s.27)

APPENDIX H

27. Section 9 of P.L.1966, c.36 (C.54:11A-9) is amended to read as follows: **This section was repealed by L. 1993, c. 174, s. 1, effective July 7, 1993.**

9. (a) Whenever property subject to taxation under this act has or shall have been omitted from assessment by failure of the taxpayer to include it in a return, or otherwise, the director may, if he finds that such property has been omitted from his assessment, cause such property to be assessed for any omitted years in accordance with the provisions of this act.

(b) The [power of the director to assess omitted property under this act shall be limited to the period of 5 years next preceding the year in which the assessment of omitted property is made] examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

(cf: P.L.1966, c.136, s.9)

28. Section 12 of P.L.1966, c.36 (C.54:11A-12) is amended to read as follows: **This section was repealed by L. 1993, c. 174, s. 1, effective July 7, 1993.**

12. (a) [After a final return in due form is filed, the director shall cause the same to be examined and may make such further audit or investigation or reaudit as he may deem necessary, and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under this act, he shall assess or reassess the additional taxes, penalties and interests due the State, give notice of such assessment or reassessment to the taxpayer, and make demand upon him for payment. There shall be added to the amount of any deficiency assessment or reassessment interest at the rate as provided in the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised Statutes. If the director is satisfied that the said deficiency was not due to fraud or evasion, he may remit or waive the payment of any interest charge as provided in the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised Statutes] (Deleted by amendment, P.L. , c.).

(b) [Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than 5 years from the date of the filing of a return; provided, that where no return has been filed as provided by law, the tax may be assessed at any time. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period] (Deleted by amendment, P.L. , c.).

(c) The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

(cf: P.L.1975, c.177, s.17)

29. Section 5 of P.L.1980, c.141 (C.54:18A-1.3) is amended to read as follows:

5. (a) [After a final return in due form is filed, the director and the Commissioner of Insurance shall cause the same to be examined and may make any further audit or investigation or reaudit as they may deem necessary, and if therefrom the director shall determine that there is a deficiency with respect to

the payment of any tax due under P.L.1945, c.132, he shall assess or reassess the additional taxes, penalties and interest due the State, give notice of the assessment or reassessment to the taxpayer, and make demand upon him for payment. There shall be added to the amount of any deficiency assessment or reassessment interest at the rate as provided in the state tax uniform procedure law, subtitle 9 of Title 54 of the Revised Statutes. If the director is satisfied that the deficiency was not due to fraud or evasion, he may remit or waive the payment of any interest charge as provided in the state tax uniform procedure law, subtitle 9 of Title 54 of the Revised Statutes] (Deleted by amendment, P.L. , c.).

(b) [Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than 5 years from the date of the filing of a return; provided, that where no return has been filed as provided by law, the tax may be assessed at any time. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that the period may be extended, the amount of additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period] (Deleted by amendment, P.L. , c.).

(c) The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

(cf: P.L.1980, c.141, s.4).

30. Section 27 of P.L.1941, c.291 (C.54:29A-27) is amended to read as follows:

27. Period of limitations The power of the [commissioner] director to make reassessments or to assess omitted property under this act shall be [limited to the period of 5 years next preceding the year in which the reassessment or assessment of omitted property is made; provided, however, that assessments of omitted property by the commissioner for any year prior to 1967 shall be assessed in the manner

APPENDIX H

provided by law for the year for which the same is made] as provided by the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. (cf: P.L.1966, c.139, s.11)

31. Section 19 of P.L.1966, c.30 (C.54:32B-19) is amended to read as follows:

19. Determination of tax. If a return required by this act is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the director from such information as may be available. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, number of rooms, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors. Notice of such determination shall be given to the person liable for the collection or payment of the tax. [Such] Subject to the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within [30] 90 days after giving of notice of such determination, shall apply to the director for a hearing, or unless the director of his own motion shall redetermine the same. After such hearing the director shall give notice of his determination to the person against whom the tax is assessed. (cf: P.L.1970, c.7, s.6)

32. Section 20 of P.L.1966, c.30 (C.54:32B-20) is amended to read as follows:

20. Refunds.-- (a) In the manner provided in this section the director shall refund or credit any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the director for such refund shall be made within [2] four years from the payment thereof. Such application may be made by a customer who has actually paid the tax. Such application may also be made by a person required to collect the tax, who has collected and paid over such tax to the director, provided that the application is made within [2] four years of the payment to him by the customer, but no actual refund of moneys shall be made to such person until he shall first establish to the satisfaction of the director, under such regulations as he may prescribe, that he has repaid to the customer the amount for which the application for refund is made. The director may, in lieu of any refund, allow credit on payments due from the applicant.

(b) A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 19 where he has had a hearing or an opportunity for a hearing as provided in said section or has failed to avail himself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the director made pursuant to section 19 unless it be found that such determination was erroneous, illegal or unconstitutional or

otherwise improper, pursuant to law, in which event refund or credit shall be made of the tax, interest or penalty found to have been overpaid.

(cf: P.L.1966, c.30, s.20)

33. Section 27 of P.L.1966, c.30 (C.54:32B-27) is amended to read as follows:

27. Notice and limitations of time.-- (a) Any notice authorized or required under the provisions of this act may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this act or in any application made by him or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this act by the giving of notice shall commence to run from the date of mailing of such notice.

(b) The provisions of law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the State or the director to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this act. However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than [3] four years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(c) Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. If a taxpayer has consented in writing to the extension of the period for assessment, the period for filing an application for credit or refund pursuant to section 20 shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the consent to extend the time for assessment of additional tax.

(cf: P.L.1966, c.30, s.27)

34. R.S.54:39-29 is amended to read as follows:

54:39-29. When the [commissioner] director shall determine that any moneys received under this chapter were paid in error, he [may] shall cause the same to be refunded in accordance with such rules and regulations as he may prescribe, but [may] shall refuse to authorize a refund [in case] if more than [one year] four years has elapsed from the time the erroneous payment was made. Refunds authorized by the

APPENDIX H

[commissioner] director shall be paid from revenues collected under this article and deposited with the state treasurer.

(cf: R.S.54:39-29)

35. R.S.54:39-49 is amended to read as follows:

54:39-49. (a) The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

(b) Any person who shall be aggrieved by any order of the Director of the Division of Taxation or any assessment fixing the amount of any tax to be paid by such person may appeal from the action of the Director of the Division of Taxation in making such order or assessment to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

(cf: P.L.1983, c.36, s.41)

36. Section 11 of P.L.1963, c.44 (C.**54:39A-11**) is amended to read as follows:

11. [After a report is filed under the provisions of this act, the director shall cause the same to be examined and may make such further audit or investigation as he may deem necessary, and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under this act, he shall assess the additional taxes, penalties and interest due the State from such user, give notice of such assessment to the user and

make demand upon him for payment] The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

(cf: P.L.1973, c.117, s.11)

37. Section 19 of P.L.1963, c.44 (C.**54:39A-19**) is amended to read as follows:

19. Except with respect to payment of a special assessment imposed by the director pursuant to sections 11, 12 and 13 of [this act] P.L.1963, c.44 (C.54:39A-11 through 54:39-13), a user, at any time within [2] four years after payment of a tax, may file with the director a claim under oath for refund, in such form as the director may prescribe, stating the grounds therefor, but no claim for refund shall be permitted to be filed after proceedings on appeal have been commenced as provided in section 17 of [this act] P.L.1963, c.44 (C.54:39A-17). If, upon examination of such claim for refund, it shall be determined by the director that there has been an overpayment of tax, the amount of such overpayment shall be credited against any liability of the user under this act and if there be no such liability, the user shall be entitled to a refund of the tax so overpaid. If the director shall reject the claim for refund in whole or in part, he shall make ann order accordingly and serve a notice upon the user. This section shall

not apply to applications for refunds provided for under section 8 of [this act] P.L.1963, c.44 (C.54:39A-8).

(cf: P.L.1973, c.117, s.18)

38. R.S.54:45-5 is amended to read as follows:

54:45-5. a. [If any taxpayer shall fail to make a report as herein required, the may make an estimate of the taxable liability of such taxpayer from any information he may obtain and, according to such estimate so made by him, assess the taxes, penalties and interest due the State from such taxpayer, give notice of such assessment to the taxpayer, and make demand upon him for payment] (Deleted by amendment, P.L. , c.).

b. [After a report is filed under the provisions of this subtitle, the commissioner shall cause the same to be examined and may make such further audit or investigation as he may deem necessary, and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under this subtitle, he shall assess the additional taxes, penalties and interest due the State from such taxpayer, give notice of such assessment to the taxpayer, and make demand upon him for payment] (Deleted by amendment, P.L. , c.).

c. [All taxes, penalties and interest assessed by the commissioner pursuant to the provisions of paragraphs "a" and "b" of this section shall be paid within 15 days after notice and demand shall have been mailed to the taxpayer by the commissioner. If such taxes, penalties and interest, so assessed, shall not be paid within the 15 days, there shall be added to the amount of the assessment a sum equivalent to the penalties as provided in the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised Statutes. All such additional penalties shall be payable to and recoverable by the commissioner in the same manner as if the penalties were taxes imposed by this

subtitle. If the failure to pay the taxes, penalties and interest so assessed when required to be paid is explained to the satisfaction of the commissioner, he may remit or waive the payment of the whole or any part of any such additional penalty] (Deleted by amendment, P.L. , c.).

d. [If the commissioner finds that a taxpayer designs quickly to depart from this State or to remove his property therefrom, or to conceal himself or his property, or to discontinue business, or to do any other act tending to prejudice or render wholly or partly ineffectual proceedings to assess or collect such tax, unless such proceedings be brought without delay, the commissioner may immediately make an arbitrary assessment as hereinbefore provided in paragraph "a" of this section, whether or not any report is then due by law, and may proceed under such arbitrary assessment to collect the tax, or compel the posting of security for the payment of the same, and thereafter he shall cause notice of such finding to be given to such taxpayer, together with a demand for an immediate report and immediate payment of such tax. All taxes, assessed pursuant to the provisions of this paragraph "d,"

APPENDIX H

shall be payable forthwith after notice and demand shall have been mailed to the taxpayer by the commissioner. If such payment be not made within 15 days thereafter, there shall be added to the amount of the tax so assessed a sum equivalent the penalties and interest as provided in the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised Statutes. All such penalties and interest shall be payable to, and recoverable by, the commissioner in the same manner as if the penalty or interest were a tax imposed by this subtitle. If failure to pay the taxes, penalties and interest so assessed when required to be paid is explained to the satisfaction of the commissioner, he may remit or waive the payment of the whole or any part of any penalty or of any interest herein imposed] (~~Deleted by amendment, P.L. , c. .~~).

e. The examination of reports filed under this subtitle and the assessment of additional taxes, penalties and interest shall be as provided by the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

[e.] f. If any taxpayer shall be aggrieved by any finding or assessment of the [commissioner] director, he may, within [30] 90 days of receipt of the notice of assessment or finding, file a protest in writing signed by himself or his duly authorized agent, which shall be under oath, and shall set forth the reason therefor, and may request a hearing. Thereafter the [commissioner] director shall grant a hearing to the taxpayer, if the same shall be requested. He may make an order confirming, modifying or vacating any such finding or assessment. The filing of any such protest shall not abate penalties for nonpayment [, nor shall it stay the right of the commissioner to collect the tax in any manner herein provided, unless the taxpayer shall furnish security of the kind and in the amount satisfactory to the commissioner].

(cf: P.L.1975, c.177, s.37)

39. R.S.54:45-6 is amended to read as follows:

54:45-6. Any taxpayer, at any time within [one year] four years after the payment of any original or additional tax assessed against him may file with the [commissioner] director a claim under oath for refund, in such form as the [commissioner] director may prescribe, stating the ground therefor, but no claim for refund shall be required or permitted to be filed with respect to a tax paid after protest has been filed with the [commissioner] director or after proceedings on appeal have been commenced as provided in this subtitle.

[If upon examination of such claim for refund it shall be determined by the commissioner that there has been an overpayment of tax, the amount of such overpayment shall be credited against any liability of the taxpayer under this subtitle, and if there be no such liability the taxpayer shall be entitled to a refund of the tax so overpaid. If the commissioner shall reject the claim for refund in whole or in part, he shall make an order accordingly and serve a notice upon the taxpayer.

Where no questions of fact or law are involved and it appears from the records of the commissioner that any moneys have been erroneous-

ly or illegally collected from any taxpayer or other person or have been paid by any taxpayer or other person under a mistake of fact or law, the commissioner may at any time, and within one year after expiration or repeal of this subtitle, upon making a record in writing of his reasons therefor, certify to the comptroller that the taxpayer is entitled to such refund and thereupon the comptroller shall authorize the payment thereof from the appropriation for this purpose.

When, to secure compliance with any of the provisions of this subtitle, any moneys shall have been deposited with the commissioner by any taxpayer and shall have been paid over to the treasurer, and the commissioner shall be satisfied that such taxpayer has fully complied with all such provisions, the commissioner shall so certify to the comptroller who shall thereupon issue his warrants to the treasurer for the repayment to such taxpayer of such moneys or such part thereof as the commissioner shall certify has not been applied by him to the satisfaction of any indebtedness arising under this subtitle.]

(cf: R.S.54:45-6)

40. N.J.S.54A:9-7 is amended to read as follows:

54A:9-7. Overpayment. (a) General. The director, within the applicable period of limitations may credit an overpayment of income tax against any liability in respect of any tax imposed by the tax law on the person who made the overpayment, and the balance shall be refunded by the comptroller out of the proceeds of the tax retained by him for such general purpose. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the director approved by the comptroller. The State Treasurer, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the person who made the overpayment and other information and data available in the files of the director.

(b) Excessive withholding. If the amount allowable as a credit for tax withheld from the taxpayer exceeds his tax to which the credit relates, the excess shall be considered an overpayment.

(c) Overpayment by employer. If there has been an overpayment of tax required to be deducted and withheld under section 54A:7-4, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(d) Credits against estimated tax. The director may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year. If any overpayment of income tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

APPENDIX H

(e) Rule where no tax liability. If there is no tax liability for a period in respect of which an amount is paid as income tax, such amount shall be considered an overpayment.

(f) Under regulations prescribed by the director with approval of the State Treasurer interest shall be allowed and paid at the rate [of 6% per annum] determined by the director to be equal to the prime rate pursuant to R.S.54:48-2 upon any overpayment in respect of the tax imposed by this act, **determined for each month or fraction thereof, compounded annually at the end of each year, from the date that such interest commences to accrue to the date of refund**; but no interest shall be allowed or paid on an overpayment of less than \$1.00, nor upon any overpayment refunded within 6 months after the last date prescribed, or permitted by extension of time, for filing the return or within 6 months after the return is filed, whichever is later.
(cf: N.J.S.54A:9-7) **Bold faced underlined material added by L. 1993, c. 331 s. 2, retroactive to July 1, 1993.**

41. The following are **repealed**:

Section 20 of P.L.1973, c.170 (C.54:10E-20); and

Sections 14 and 15 of P.L.1963, c.44 (C.54:39A-14 and 54:39A-15).

42. (New section) a. Sections 2 and 3 of this act concerning the assessment of penalties shall apply to penalties for failures to file, underpayments and deficiencies first assessed on and after the July 1 next following their enactment.

b. Section 3 of this act concerning periods of limitation shall apply to tax liabilities accruing on and after the July 1 next following its enactment and, notwithstanding the provisions of sections 3, 21, 24 and 26 through 30 of this act, any unexpired fifth year of a five year period of limitation remaining on the July 1 next following the enactment of those sections shall continue to be in full force and effect.

c. Section 5 of this act concerning claims for refunds shall apply to claims accruing on and after the July 1 next following its enactment, and, notwithstanding the provisions of sections 5, 32, 34, 37 and 39 of this act to the contrary, all claims barred by the applicable statutes of limitation on the July 1 next following the enactment of those sections shall continue to be barred as if those sections had not been enacted.

d. Section 11 of this act shall apply to determinations, collections, refund applications, and assessments of penalties and interest made on and after the July 1 next following enactment of that section.

e. Section 12 of this act shall apply to employee actions taken on and after the July 1 next following enactment of that section.

f. Sections 14 and 16 of this act shall apply to protests of the director's actions made, or complaints filed, on and after the July 1 next following its enactment and, notwithstanding the provisions of sections 14 and 33 of this act and the repeal of section 20 of P.L.1973,

c.170 (C.54:10E-20) set forth in section 41 of this act, the time for filing a protest concerning a finding or assessment of the director made prior to the July 1 next following enactment of those sections shall continue to apply as if those provisions had not been enacted and the determination of any bond or bond amount required by law prior to that date shall remain in effect as if those sections had not been enacted.

g. Notwithstanding the repeal of sections 14 and 15 of P.L.1963, c.44 (C.54:39A-14 and 54:39A-15) set forth in section 41 of this act, the obligation, lien or duty to pay any taxes, interest or penalties which have accrued or may accrue by virtue of any assessment made or which may be made with respect to taxes due on sales made prior to the July 1 next following enactment of section 41 shall remain as if that section had not been enacted, nor shall this act affect the legal authority to assess and collect the taxes which may be or have been due and payable under P.L.1963, c.44, together with such interest and penalties as would have accrued thereon under any provision of law; nor shall this act invalidate any assessments or affect any proceeding for the enforcement thereof.

43. N.J.S.54A:9-5 is amended to read as follows:

54A:9-5. Interest on underpayment. (a) General. If any amount of income tax is not paid on or before the last date prescribed in this act for payment, interest on such amount at the rate as is required under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(b) Exception as to estimated tax. This section shall not apply to any failure to pay estimated tax under section 54A:8-5.

(c) (Deleted by amendment, P.L.1987, c.76.)

(d) (Deleted by amendment, P.L.1987, c.76.)

(e) Suspension of interest on deficiencies. If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the director for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(f) Interest treated as tax. Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as income tax. Any reference in this act to the tax imposed by this act shall be deemed also to refer to interest imposed by this section on such tax.

(g) [Interest on penalties or additions to tax. Interest shall be imposed under subsection (a) in respect of any assessable penalty or addition to tax only if such assessable penalty on addition to tax is not paid within 10 days from the date of the notice and demand therefor

APPENDIX H

under subsection (b) of section 54A:9-12, and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment] (Deleted by amendment, P.L. , c. .)(now pending before the Legislature as this bill)

(h) Payment prior to notice of deficiency. If, prior to the mailing to the taxpayer of a notice of deficiency under subsection (b) of section 54A:9-2, the director mails to the taxpayer a notice of proposed increase of tax and within 30 days after the date of the notice of proposed increase the taxpayer pays all amounts shown on the notice to be due to the director, no interest under this section on the amount so paid shall be imposed for the period after the date of such notice of proposed increase.

(i) Payment within 10 days after notice and demand. If notice and demand is made for payment of any amount under subsection (b) of section 54A:9-12, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(j) Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

(k) Interest on erroneous refund. Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the director, shall bear interest as is required under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

(l) Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(cf: P.L.1987, c.76, s.58)

[43.] 44. This act shall take effect immediately, provided however that sections 1 through 41 and section 43 shall remain inoperative until the July 1 next following enactment, provided however that sections 9, 10, 13, [15,] 17 and 18 shall remain inoperative until the January 1 next following enactment.