

"AN ACT TO PROVIDE A TAX PENALTY AMNESTY PROGRAM; AND FOR OTHER PURPOSES."

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

SECTION 1. This Act shall be known as and may be cited as the "Arkansas Tax Penalty Amnesty Act".

SECTION 2. For the purposes of this Act, the following terms shall have the meanings ascribed to them in this Section:

(a) "Commissioner" means the Commissioner of Revenues, Department of Finance and Administration, State of Arkansas or his authorized agent.

(b) "Taxpayer" means any natural person, corporation or other entity subject to or liable for any State tax.

(c) "State Tax" means any tax, including any local tax, or any fee for a license, permit, or registration which is payable to, collected by or administered by the Division of Revenues, Department of Finance and Administration, State of Arkansas, except those taxes or fees specifically excluded from Act 401 of 1979, as amended [Ark. Stat. Ann. 84-4701 et seq.].

(d) "Account Receivable" means an amount of State tax, penalty or interest which has been recorded as due and entered in the account records of the Commissioner, or which the taxpayer should reasonably expect to become due as a direct or indirect result of any pending or completed audit or investigation which the taxpayer knows is being conducted by any governmental taxing authority (federal, state or local).

(e) "Voluntary Payment" means payment of any State tax which was required to be reported prior to February 1, 1987, which was not reported prior to the effective date of this Act, and which is not an Account Receivable. Provided, however, that "Voluntary Payment" shall not include payment of any State tax with respect to which a taxpayer is under criminal investigation, charge or prosecution. Provided, further, that "Voluntary Payment" shall not include payment of any State tax with respect to which the Commissioner has sent notice of proposed assessment to the taxpayer pursuant to Section 18 of Act 401 of 1979.

SECTION 3. The Commissioner shall administer a tax penalty amnesty program for taxpayers who make voluntary payment of State taxes during the period September 1, 1987 through November 30, 1987. Amnesty tax forms shall be developed and prescribed by the Commissioner and shall provide for specification by the taxpayer of the voluntary payment for which amnesty is being sought.

SECTION 4. Upon written application by any taxpayer and voluntary payment by such taxpayer of all State taxes due from such taxpayer to the State of Arkansas, plus the interest due, such taxpayer shall not be subject to criminal prosecution nor shall any penalties be assessed with respect to the voluntary payment. Amnesty shall be granted only to taxpayers who apply for amnesty during the period September 1, 1987 through November 30, 1987 and who make payment of the tax due and the amount of interest due, as computed by the Commissioner, in not less than 12 months from the filing of the amnesty tax form and all other applicable tax forms. Failure to pay all State tax and interest due shall invalidate any amnesty granted pursuant to this Act.

SECTION 5. Nothing in this Act shall be construed to prohibit the Commissioner from examining forms filed pursuant to this Act or assessing additional tax, penalty and interest due after such forms are filed:

SECTION 6. (a) The Commissioner is authorized to publicize the tax penalty amnesty program by means of any medium available to further public awareness of and participation in the program.

(b) For the duration of the period during which the amnesty program is conducted, the Commissioner is authorized to employ twenty (20) additional employees to aid in the administration of said program. The Commissioner is further authorized to receive and expend additional sums totalling Fifty Thousand Dollars (\$50,000.00) to implement the provisions of and the items authorized by this Act.

SECTION 7. Section 35 of Act 401 of 1979 [Ark. Stat. Ann. 84-4735] is hereby amended to read as follows:

"Section 35. Any person, who, after the forfeiture by the Commissioner of any bond posted by him, continues or attempts to continue in the business or activities for which the bond was required to be posted, without having the bond reinstated or without making a new bond, is guilty of a Class D felony. Each day of continuing or conducting business or activities is a separate violation."

SECTION 8. Section 36 of Act 401 of 1979 [Ark. Stat. Ann. 84-4736] is hereby amended to read as follows:

"Section 36. Any taxpayer who willfully attempts to evade or defeat the payment of any tax, penalty, or interest due under any State tax law shall be guilty of a Class C felony."

SECTION 9. Section 37 of Act 401 of 1979 [Ark. Stat. Ann. 84-4737] is hereby amended to read as follows:

"Section 37. Any taxpayer required to make, render, sign or verify any report, return, statement, claim, application or other instrument by this Act or by any State tax law, who, with intent to defeat or evade the assessment or levy of the tax, or to obtain any permit or license makes a false or fraudulent return, statement, report, claim, invoice, application, or other instrument, or any tax return preparer, or other person who aids or abets another in filing such a false or fraudulent report or statement, is guilty of Class D felony."

SECTION 10. Section 38 of Act 401 of 1979 [Ark. Stat. Ann. 84-4738] is hereby amended to read as follows:

"Section 38. Any person who, being duly summoned to appear to testify or to produce and permit the examination of any books, records or papers, neglects to appear or to produce such papers, shall be guilty of a Class D felony."

SECTION 11. Section 39 of Act 401 of 1979 [Ark. Stat. Ann. 84-4739] is hereby amended to read as follows:

"Section 39. Any taxpayer or other person, who knowingly makes a false answer to any question, which may be asked him by the Commissioner, concerning the business, property, assets or effects of any such taxpayer or person, or the valuation thereof, or the income or profits therefrom, or who makes or presents any false affidavit concerning any list, schedule, statement, report or return, or for any other purpose, filed with the Commissioner or required to be filed by any State tax law, shall be guilty of a Class D felony."

SECTION 12. Section 40 of Act 401 of 1979 [Ark. Stat. Ann. 84-4740] is hereby amended to read as follows:

"Section 40. Any person required under any State tax law to pay over any tax or file any return, who willfully fails to pay over such tax or file such return shall be guilty of a Class D felony."

SECTION 13. Section 41 of Act 401 of 1979, as amended [Ark. Stat. Ann. 84-4741], is hereby amended to read as follows:

"Section 41. In addition to the criminal penalties provided by this Act [84-4701 -- 84-4744], if a taxpayer shall fail to comply with certain provisions of this Act, then the following penalties and additions to tax shall be applicable.

(a) (1) In the case of a taxpayer's failure to file any return required by any State tax law on or before the date prescribed therefor (determined with regard to any extension of time for filing thereof), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be added to the amount required to be shown as tax on such return, five percent (5%) of the amount of such tax if such failure is not more than one (1) month, with an additional five percent (5%) for each additional month or fraction thereof during which such failure continues, not to exceed thirty-five percent (35%) in the aggregate.

(2) In the case of a taxpayer's failure to pay the amount shown as tax on any return required to be filed under any State tax law on or before the date prescribed for payment of such tax, unless it is shown that such failure to pay is due to reasonable cause and not to willful neglect, there shall be added to the amount shown as tax on such return five percent (5%) of the amount of such tax if the failure is not more than one (1) month, with an additional five percent (5%) for each additional month or fraction thereof during which such failure continues, not exceeding thirty-five percent (35%) in the aggregate.

(3) If any penalty is assessed under subparagraph (a)(1) of this section, then no penalty shall be assessed under subparagraph (a)(2). If any penalty is assessed under subparagraph (a)(2) of this section, then no penalty shall be assessed under subparagraph (a)(1).

(b) If any part of a deficiency in taxes is determined to be due to negligence or intentional disregard of rules and regulations promulgated under the authority of this Act or any State tax law, then the Commissioner shall add a penalty of ten percent (10%) of the total amount of the deficiency, in addition to any interest provided by law. Provided, however, that if any penalty is assessed under subsection (a) of this section, then no penalty shall be assessed under subsection (b) of this section.

(c) (1) If any part of any deficiency of any State tax required to be shown on a return is determined to be due to fraud, there shall be added to the tax an amount equal to fifty percent (50%) of the deficiency, in addition to any interest provided by law.

(2) If any penalty is assessed under subparagraph (c)(1) of this section, then no penalty shall be assessed under subsection (a) or (b) of this section.

(d) In the case of a taxpayer who fails to make a declaration of estimated tax and pay on any quarterly due date, the equivalent to at least ninety percent (90%) of the amount actually due, there shall be added a penalty of ten percent (10%) on the amount of the underestimate. However, the penalty provided herein shall not be applicable where the original amount of estimated tax is the same amount shown to be due by the return of the taxpayer for the preceding income year where such return showing liability for tax was filed by the taxpayer for the preceding income year of twelve (12) months.

(e) In addition to any other penalty provided by law, there shall be

assessed a penalty of \$500.00 if any taxpayer:

(1) files what purports to be a return, but such purported return does not contain information on which the substantial correctness of the return may be judged, and such conduct is due to a position which is frivolous or an effort to delay or impede the administration of any State tax law; or

(2) files what purports to be a return, but such purported return contains information that on its face indicates that the return is substantially incorrect, and such conduct is due to a position which is frivolous or an effort to delay or impede the administration of any State tax law; or

(3) asserts or relies upon any grounds in defense or avoidance of a proposed assessment of tax, penalty or interest and such conduct is due to a position which is frivolous or an effort to delay or impede the administration of any State tax law.

(f) All penalties or additions to tax and interest imposed by any State tax law are assessable and collectible by the Commissioner as a part of the tax due and owing.

(g) if any person makes payment to the Commissioner for any taxes, licenses, or fees imposed by any laws of this State, by means of a check, draft, or order drawn on any bank, person, firm or corporation without having been paid in full, the Commissioner is authorized and empowered to impose a penalty of ten percent (10%) of the face amount of such check, draft or order or ten dollars (\$10.00), whichever is greater, against the maker or drawer of such check, draft or order. This Section shall not apply if the person establishes to the satisfaction of the Commissioner that he tendered such check, draft or order in good faith and with reasonable cause to believe it would be duly paid."

SECTION 14. Section 15 of Act 132 of 1965, as amended [Ark. Stat. Ann. 84-2079.4] is hereby amended to read as follows:

"Section 15. A taxpayer who makes a declaration of estimated tax for the income year shall estimate an amount not less than ninety percent (90%) of the amount actually due."

SECTION 15. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 16. EMERGENCY. It is hereby found and determined by the General Assembly that the State of Arkansas is in great need of additional general revenues and that providing a tax penalty amnesty program will result in a substantial addition to the generation of such much needed general revenues. It is further found and determined that certain criminal and civil penalties provided for in the Arkansas Tax Procedure Act must be made more severe to effectuate the collection of taxes owed under the laws of this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: April 1, 1987
