

**NINTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE**

**PUBLIC LAW NO. 9-58**

**H. B. NO. 9-482**

**FOURTH REGULAR SESSION, 1995**

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**AN ACT**

To amend Title 4, Division 1, Chapter 7 of Public Law No. 9-22, the 1995 Tax Reform Act, to eliminate rebate forfeitures, avoid tax compliance disincentives, and prevent unintended consequences of administrative provisions; and for other purposes.

**BE IT ENACTED BY THE NINTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:**

Section 1. Findings and Purpose. The Legislature finds that several changes were made to the tax relief provisions of the Northern Marianas Territorial Income Tax (NMTIT) as part of the 1995 Tax Reform Act with an intent to improve tax administration. Unfortunately, under the intense pressures of time, complexity, and conflicting interests attending the urgent passage of the 1995 tax reform, the Legislature was unable to deliberate fully on whether these changes would actually achieve the hoped for improvements in efficiency and effectiveness of tax administration. The Legislature further finds that these changes have the potentially draconian effect of causing forfeiture of tax rebates as a consequence of underpayment of taxes by even one penny, and, therefore, undermine public confidence in the fundamental fairness of the tax system. Because their entire rebate may be at risk, taxpayers with an underpayment will have a strong incentive to under report their income to protect their rebate, thus undermining the voluntary compliance that is so critically important to efficient and effective tax administration. Underreporting also distorts the statistical base on which economic and fiscal planners must depend.

Consequently, the legislature finds that these new provisions will not achieve their intended goal and therefore should be removed from the tax code. Existing Internal Revenue Code penalties for underpayment of taxes (including taxes underwithheld) are fully sufficient to encourage full payment during the tax year. Indeed, these penalties, unlike the rebate forfeiture provisions, are likely to generate additional revenue. A taxpayer is willing to pay the penalty, collect his or her rebate, and be secure against the risk of audit. Against the harsh penalty of rebate forfeiture, however, the stakes are much higher, and a taxpayer is much more likely to under report income, save the rebate, and face the risk of audit. If the new provisions were to work as their drafters intended, that is, to eliminate underpayment of taxes during the tax year, there would be no penalties and no forfeited rebates; consequently there are no revenue production aspects attributable to these provisions. Further, the Legislature finds that the rebate forfeiture provisions of P.L. 9-22 may constitute an unconstitutional taking of property without due process of law.

Provisions which call for forfeiture of all or part of the rebate for late filing, in addition to having potential constitutional infirmities, can easily have the unintended effect of discouraging the taxpayer from ever filing at all. Timely filing of local taxes is better encouraged by reversing the

current penalty system which penalizes late payment more severely than late filing, to parallel the Internal Revenue Code system. The \$100 or 10 percent underpayment threshold for forfeiture of the entire rebate is completely arbitrary and therefore constitutionally suspect, and in any event conflicts directly with two other provisions which indicate complete forfeiture for any underpayment at all. At best, these provisions contribute to taxpayer confusion, fear, and uncertainty.

Even if the new provisions were read as only requiring taxpayers to issue a check and then get their money plus some in a few months--a generous construction which is by no means mandated, and, indeed, which a court could easily conclude leads to an absurd result and therefore could not possibly have been intended--this would nonetheless place an entirely unnecessary burden on taxpayers and serve no meaningful purpose.

The purpose of this Act is to help restore public confidence in the fundamental fairness of the tax system, promote voluntary compliance with the tax laws, and ensure effective and efficient tax administration. Because this Act concerns tax administration alone and is not designed to increase or decrease revenues, it does not have any impact on the Commonwealth budget or FY 1995 projected revenues.

Section 2. Amendments.

(a) 4 CMC § 1708, as enacted by Public Law No. 9-22, is hereby amended to read:

"(a) General Rule. Every person subject to the NMTIT shall be entitled to a rebate in the amount determined under subsection (b) of this section. Every taxpayer shall be entitled to apply all or part of any rebate due to any tax reported on the return (including penalties and interest) and not previously paid; Provided that, this right of offset shall not reduce or eliminate any penalty or liability under the NMTIT on account of underpayment.

(b) 4 CMC § 1708(b)(2), as enacted by Public Law No. 9-22, is repealed.

(c) 4 CMC § 1708(b)(3)(B), as enacted by Public Law No. 9-22, is repealed.

(d) 4 CMC § 1708(b)(3)(C), as enacted by Public Law No. 9-22, is repealed.

(e) 4 CMC § 1708(f), as enacted by Public Law No. 9-22, is repealed.

(f) 4 CMC § 1815 is amended to read:

"§ 1815. Monthly Penalty Upon Taxes.

In case of failure to pay any tax levied or imposed under this Act when due, there shall be added to the amount due, one percent (1%) of the amount of such tax if the period of nonpayment is not more than one month, with an additional one percent (1%) for each additional month or fraction thereof during which nonpayment continues; Provided, however, that the minimum penalty under this section shall be \$5."

(g) 4 CMC § 1816 is amended to read:

"§ 1816. Failure to File Return on Time.

Except as may be permitted by the Secretary or designee, if any employer or taxpayer fails to make and file a return required under this Act on or before the date set, unless prior to that date such taxpayer applied for and received an extension for reasonable cause, ten percent (10%) of the tax shall be added for each 30 days or fraction thereof elapsing between the due date of the return and the date on which it is actually filed, not exceeding 100 percent in the aggregate."

Section 3. Severability. If any provision of this Act or the application of any such provision

to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 4. Effective Date. Upon its approval by the Governor or upon its becoming law without such approval, this Act shall take effect January 1, 1995, except subsections (f) and (g) of Section 2 shall take effect January 1, 1996.

**CERTIFIED BY:**

**ATTESTED BY:**

/s/ Diego T. Benavente  
DIEGO T. BENAVENTE  
Speaker

/s/ Evelyn C. Fleming  
EVELYN C. FLEMING  
House Clerk

Approved this 6th day of October, 1995

/s/ Froilan C. Tenorio  
FROILAN C. TENORIO  
Governor  
Commonwealth of the Northern Mariana Islands