

54:49-3

**LEGISLATIVE HISTORY CHECKLIST**  
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(Tax payments--late--  
interest)

**NJSA:** 54:49-3

**LAWS OF:** 1993 **CHAPTER:** 331

**BILL NO:** A2176

**SPONSOR(S)** Frelinghuysen and others

**DATE INTRODUCED:** January 11, 1993

**COMMITTEE:** **ASSEMBLY:** Appropriations

**SENATE:** Budget

**AMENDED DURING PASSAGE:** Yes Amendments during passage  
First reprint enacted denoted by superscript  
numbers

**DATE OF PASSAGE:** **ASSEMBLY:** March 1, 1993

**SENATE:** December 13, 1993

**DATE OF APPROVAL:** December 23, 1993

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

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[FIRST REPRINT]  
ASSEMBLY, No. 2176  
STATE OF NEW JERSEY

INTRODUCED JANUARY 11, 1993

By Assemblyman FRELINGHUYSEN, Assemblywomen  
HECK and Derman

1 AN ACT concerning penalties and interest rates for the late  
2 payment of tax liabilities, amending R.S.54:49-3 <sup>1</sup>[and],<sup>1</sup>  
3 R.S.54:50-6 <sup>1</sup>, R.S.54:49-6, P.L.1992, c.175 and N.J.S.54A:9-7<sup>1</sup>.  
4

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

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

8 54:49-3. Any taxpayer who shall fail to pay any State tax on or  
9 before the day when the same shall be required by law to be paid  
10 shall pay in addition to the tax, unless otherwise provided in the  
11 law imposing such tax, interest and penalty, if any, on said tax at  
12 the rate of [five] three percentage points above the prime rate [,  
13 to be compounded daily upon the amount that remains unpaid,]  
14 <sup>1</sup>[to be calculated] assessed for each month or fraction thereof,  
15 compounded annually at the end of each year,<sup>1</sup> from the date the  
16 tax was originally due until the date of actual payment. [In  
17 addition thereto, if] If the director is empowered by the law  
18 imposing such tax to grant an extension of time in which the tax  
19 shall be paid, the taxpayer shall be liable for the payment of  
20 interest on the unpaid tax at the rate of three percentage points  
21 above the prime rate [, to be compounded daily] <sup>1</sup>assessed for  
22 each month or fraction thereof, compounded annually at the end  
23 of each year,<sup>1</sup> from the date that such tax was originally due to  
24 the date of actual payment [; provided that if such unpaid tax is  
25 not paid within the time fixed under the extension, the interest  
26 on such unpaid tax shall be computed at the rate of five  
27 percentage points above the prime rate, to be compounded daily  
28 from the date the tax was originally due to the date of actual  
29 payment]. Any amount of tax unpaid after the time when the  
30 same shall be required by law to be paid, or after an extension of  
31 time if granted, is an underpayment for the purposes of  
32 R.S.54:49-4.

33 (cf: P.L.1987, c.76, s.2)

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

35 54:50-6. a. Any notice required to be given by the director  
36 pursuant to the State Tax Uniform Procedure Law, R.S.54:48-1 et  
37 seq., may be served personally or by mailing the same to the  
38 person for whom it is intended, addressed to such person at the  
39 address given in the last report filed by that person pursuant to  
40 the provisions of the State Tax Uniform Procedure Law, or of any  
41 state tax law, or if no report has been filed, then to such address

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SBA committee amendments adopted May 10, 1993.

1 as may be obtainable. The mailing of such notice shall be  
2 presumptive evidence of the receipt of the same by the person to  
3 whom it was addressed. A notice may at the prescription of the  
4 director include on its face a designation which shall identify the  
5 notice for purposes of communication.

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

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

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

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

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

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

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

34 (cf: P.L.1992, c.175, s.15)

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

36 54:49-6. a. After a return or report is filed under the  
37 provisions of any State tax law, the director shall cause the same  
38 to be examined and may make such further audit or investigation  
39 as he may deem necessary, and if therefrom he shall determine  
40 that there is a deficiency with respect to the payment of any tax  
41 due under such law, he shall assess the additional taxes, penalties,  
42 if any, pursuant to any State tax law or pursuant to this subtitle,  
43 and interest at the rate of three percentage points above the  
44 prime rate due the State from such taxpayer assessed for each  
45 month or fraction thereof, compounded annually at the end of  
46 each year, from the date the tax was originally due until the date  
47 of actual payment, give notice of such assessment to the  
48 taxpayer, and make demand upon him for payment.

49 b. No assessment of additional tax shall be made after the  
50 expiration of more than four years from the date of the filing of  
51 a return; provided, that in the case of a false or fraudulent return  
52 with intent to evade tax, or failure to file a return, the tax may  
53 be assessed at any time. If a shorter time for the assessment of  
54 additional tax is fixed by the law imposing the tax, the shorter

1 time shall govern. If, before the expiration of the period  
2 prescribed herein for the assessment of additional tax, a taxpayer  
3 consents in writing that such period may be extended, the amount  
4 of such additional tax due may be determined at any time within  
5 such extended period. The period so extended may be further  
6 extended by subsequent consents in writing made before the  
7 expiration of the extended period. For purposes of this  
8 subsection, a return filed before the last day prescribed by law or  
9 by regulations promulgated pursuant to law for the filing thereof,  
10 shall be considered as filed on such last day.<sup>1</sup>

11 (cf: P.L.1992, c.175, s.3)

12 <sup>14.</sup> Section 7 of P.L.1992, c.175 (C.54:49-15.1) is amended to  
13 read as follows:

14 7. For tax paid with respect to reports or returns due on and  
15 after the first day of the sixth month following the July 1 next  
16 following enactment of this section, interest shall be allowed and  
17 paid on every overpayment of tax at a rate determined by the  
18 director to be equal to the prime rate, determined for each  
19 month or fraction thereof, compounded annually at the end of  
20 each year, from the date that such interest commences to accrue  
21 to the date of refund. Interest shall commence to accrue on the  
22 later of the date of the filing by the taxpayer of a claim for  
23 refund or requested adjustment, the date of the payment of the  
24 tax, or the due date of the report or the return thereof; but no  
25 interest shall be allowed or paid on an overpayment of less than  
26 \$1.00, nor upon any overpayment refunded within six months  
27 after the last date prescribed, or permitted by extension of time,  
28 for filing the return or within six months after the return is filed,  
29 whichever is later.<sup>1</sup>

30 (cf: P.L.1992, c.175, s.7)

31 <sup>15.</sup> N.J.S.54A:9-7 is amended to read as follows:

32 54A:9-7. Overpayment. (a) General. The director, within the  
33 applicable period of limitations may credit an overpayment of  
34 income tax against any liability in respect of any tax imposed by  
35 the tax law on the person who made the overpayment, and the  
36 balance shall be refunded by the comptroller out of the proceeds  
37 of the tax retained by him for such general purpose. Any refund  
38 under this section shall be made only upon the filing of a return  
39 and upon a certificate of the director approved by the  
40 comptroller. The State Treasurer, as a condition precedent to  
41 the approval of such a certificate, may examine into the facts as  
42 disclosed by the return of the person who made the overpayment  
43 and other information and data available in the files of the  
44 director.

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

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

53 (d) Credits against estimated tax. The director may prescribe  
54 regulations providing for the crediting against the estimated

1 income tax for any taxable year of the amount determined to be  
2 an overpayment of the income tax for a preceding taxable year.  
3 If any overpayment of income tax is so claimed as a credit  
4 against estimated tax for the succeeding taxable year, such  
5 amount shall be considered as a payment of the income tax for  
6 the succeeding taxable year (whether or not claimed as a credit  
7 in the declaration of estimated tax for such succeeding taxable  
8 year), and no claim for credit or refund of such overpayment shall  
9 be allowed for the taxable year for which the overpayment arises.

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

13 (f) Under regulations prescribed by the director with approval  
14 of the State Treasurer interest shall be allowed and paid at the  
15 rate determined by the director to be equal to the prime rate  
16 pursuant to R.S.54:48-2 upon any overpayment in respect of the  
17 tax imposed by this act, determined for each month or fraction  
18 thereof, compounded annually at the end of each year, from the  
19 date that such interest commences to accrue to the date of  
20 refund; but no interest shall be allowed or paid on an  
21 overpayment of less than \$1.00, nor upon any overpayment  
22 refunded within six months after the last date prescribed, or  
23 permitted by extension of time, for filing the return or within six  
24 months after the return is filed, whichever is later.<sup>1</sup>

25 (cf: P.L.1992, c.175, s.40)

26 <sup>1</sup>[3.] 6.<sup>1</sup> This act shall take effect immediately and <sup>1</sup>[section]  
27 sections<sup>1</sup> 1, 3, 4 and 5<sup>1</sup> shall <sup>1</sup>be retroactive to July 1, 1993 if  
28 enacted after that date and sections 1 and 3 shall<sup>1</sup> apply to  
29 interest and penalties for failures to pay tax first due <sup>1</sup>or  
30 deficiencies first assessed<sup>1</sup> on and after <sup>1</sup>[the]<sup>1</sup> July 1 <sup>1</sup>[next  
31 following its enactment and section 2 shall remain inoperative  
32 until the July 1 next following its enactment] , 1993<sup>1</sup>.

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Concerns calculation of interest rates under State tax laws.

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

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

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

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

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

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

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

29 (cf: P.L.1992, c.175, s.15)

30 3. This act shall take effect immediately and section 1 shall  
31 apply to interest and penalties for failures to pay tax first due on  
32 and after the July 1 next following its enactment and section 2  
33 shall remain inoperative until the July 1 next following its  
34 enactment.

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37 STATEMENT

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39 This bill reduces the State Tax Uniform Procedure Law interest  
40 rate on late payments of tax from the prime rate plus five  
41 percentage points to the prime rate plus three percentage points  
42 and eliminates the requirement of daily compounding of interest  
43 on late payment amounts. This bill brings the treatment of late  
44 payments of tax into conformity with the recently amended  
45 treatment of assessed deficiencies under the State Tax Uniform  
46 Procedure Law.

47 This bill also makes technical changes to legal references  
48 recently included in the State Tax Uniform Procedure Law.

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53 Reduces late tax payment interest rate under State Tax Uniform  
54 Procedure Law.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2176

STATE OF NEW JERSEY

DATED: FEBRUARY 22, 1993

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2176.

Assembly Bill No. 2176 reduces the State Tax Uniform Procedure Law interest rate on late payments of tax from the prime rate plus five percentage points to the prime rate plus three percentage points and eliminates the requirement of daily compounding of interest on late payment amounts. This bill is a technical revision, correcting an interest rate that was omitted from P.L.1992, c.175, the taxpayer's bill of rights, and bringing the treatment of late payments of tax into conformity with the treatment of assessed deficiencies under the State Tax Uniform Procedure Law. That law made various tax administration provisions uniform for the taxes collected by the Division of Taxation, including the rates of interest on charged for deficiencies and paid on refunded overpayments of tax. This bill also makes technical changes to legal references recently included in the State Tax Uniform Procedure Law by the taxpayer's bill of rights.

FISCAL IMPACT:

This bill reduces the interest rate on late payments of tax and eliminates the requirement of daily compounding of interest, a change that was inadvertently omitted from P.L.1992, c.175, the taxpayer's bill of rights. The Director of the Division of Taxation expressed the opinion that P.L.1992, c.175, which was understood to include the revision in this bill, would have no net fiscal impact on the State.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2176**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 10, 1993

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2176, with committee amendments.

Assembly Bill No. 2176, as amended, reduces the State Tax Uniform Procedure Law interest rate on late payments of tax from the prime rate plus five percentage points to the prime rate plus three percentage points and specifies the method for the calculation of the interest rates of the tax laws.

This bill is a technical revision, correcting an interest rate that was omitted from P.L.1992, c.175, the taxpayer's bill of rights. That law made various tax administration provisions uniform for the taxes collected by the Division of Taxation, including the rates of interest charged for deficiencies and paid on refunded overpayments of tax. This bill brings the treatment of late payments of tax into conformity with the treatment of assessed deficiencies under the State Tax Uniform Procedure Law. The bill clarifies the calculation of the assessment and compounding of penalty interest and the interest to be paid on refunds of overpayments. This bill also makes technical changes to legal references recently included in the State Tax Uniform Procedure Law by the taxpayer's bill of rights.

COMMITTEE AMENDMENTS

The committee amended the bill to provide that interest will be assessed for insufficient payments and determined for overpayments for each month or fraction of a month, and that the interest on payments and penalties, if any, will be compounded annually. P.L.1992, c.175, the taxpayer's bill of rights, eliminated the daily compounding of interest to simplify interest calculation but did not specify an alternative assessment or compounding method.

FISCAL IMPACT

This bill reduces the interest rate on late payments of tax and eliminates the requirement of daily compounding of interest, a change that was inadvertently omitted from P.L.1992, c.175, the taxpayer's bill of rights. The Director of the Division of Taxation expressed the opinion that P.L.1992, c.175, which was understood to include the revisions in this bill, would have no net fiscal impact on the State.