



SPONSOR: Rep. Baumbach & Rep. Dorsey Walker & Sen. Hansen

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 324

AN ACT TO AMEND TITLES 29 AND 30 OF THE DELAWARE CODE RELATING TO THE ADMINISTRATIVE RESPONSIBILITIES OF THE DEPARTMENT OF FINANCE.

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

1 Section 1. Amend § 358, Title 30 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 358. ~~Bonds of Department employees.~~ [Repealed.]

4 ~~The Secretary of Finance shall require such of the officers, agents or employees of the Department of Revenue as~~
5 ~~the Secretary designates to give bond for the faithful performance of their duties, in such sum and with such security as the~~
6 ~~Secretary determines. All premiums on such bonds shall be paid by the Department of Revenue out of moneys appropriated~~
7 ~~for that purpose.~~

8 Section 2. Amend § 564, Title 30 of the Delaware Code by making deletions as shown by strike through and
9 insertions as shown by underline as follows:

10 § 564. Closing agreements.

11 The Director, or any person authorized in writing by the Director, is authorized to enter into an agreement in
12 writing with any person relating to the liability of such person (or of another person for whom such person acts) with
13 respect to any tax ~~imposed by this title or Title 4~~ that is subject to administration and enforcement by the Department of
14 Finance and imposed under the Delaware Code for any taxable period. Such agreement shall be final and conclusive, and,
15 except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

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

18 (2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment,
19 abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded.

20 Section 3. Amend Subchapter V, Chapter 5, Title 30 of the Delaware Code by making deletions as shown by strike
21 through and insertions as shown by underline as follows:

22 § 571. Attempt to evade or defeat tax; class E felony.

Any person who wilfully attempts in any manner to evade or defeat any tax imposed by Title 4 or by this title, that is subject to administration and enforcement by the Department of Finance and imposed under the Delaware Code, other than § 3002 and Chapters 51 and 52 of this title, or the payment thereof, shall, in addition to the penalties imposed by law, be guilty of a class E felony as defined in Title 11.

§ 572. Failure to collect or pay over tax; class E felony.

Any person required under this title to collect, account ~~for~~ for, and pay over any tax imposed by Title 4 or by this title, that is subject to administration and enforcement by the Department of Finance and imposed under the Delaware Code, other than § 3002 and Chapters 51 and 52 of this title, who wilfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a class E felony as defined in Title 11.

§ 573. Failure to file return, supply information or pay tax; class A misdemeanor.

(a) With respect to any tax or estimated tax subject to administration and enforcement by the Department of Finance and required to be paid under the Delaware Code or by regulations made under authority thereof, ~~Any~~ any person required under Title 4, or by this title, other than § 3002 and Chapter 51 and 52 of this title, to pay any estimated tax or tax required by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title, or by regulations made under authority thereof, to pay any estimated tax or tax, to make a return (other than a return of estimated tax), keep any ~~records~~ records, or supply any information, who wilfully fails to pay such estimated tax or tax, make such return, keep such ~~records~~ records, or supply such information, at the time or times required by law or regulations, ~~shall, in addition to other penalties provided by law, be is~~ guilty of a class A misdemeanor as defined in Title 11.

(b) In the case of any individual with respect to whom there is a failure to pay any estimated tax, this section shall does not apply to such individual with respect to such failure if there is no addition to the tax under § 535(b) of this title with respect to such failure.

(c) Prosecution under this section does not preclude application of any other applicable penalty under the law.

(d) This section does not apply to any person required to pay an estimated tax or tax required under § 3002 and Chapters 51 and 52 of this title.

§ 574. Fraud and false statements; class E felony.

(a) A ~~Except as provided in subsection (b) of this section, a person who commits one~~ any of the following acts ~~shall be is~~ guilty of a class E felony as defined in Title 11 ~~if that person:~~ Title 11:

(1) Wilfully makes and subscribes any return, ~~statement~~ statement, or other document that is subject to administration and enforcement by the Department of Finance, which contains or is verified by a written declaration

that it is made under the penalties of perjury, and which the person does not believe to be true and correct as to every material ~~matter; or~~ matter.

(2) Wilfully aids or assists in, or procures, ~~counsels~~ counsels, or advises the preparation or presentation under, or in connection with any matter ~~arising under Title 4 or this title, other than § 3002 and Chapters 51 and 52 of this title, that is subject to administration and enforcement by the Department of Finance and arises under the Delaware Code,~~ of a return, affidavit, ~~claim~~ claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, ~~claim or document; or~~ claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, ~~entry~~ entry, or other document ~~required by the provisions of Title 4 or this title, other than § 3002 and Chapters 51 and 52 of this title, that is subject to administration and enforcement by the Department of Finance and required under the Delaware Code, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in~~ in, or connives at such execution ~~thereof; or~~ thereof.

(4) Removes, ~~deposits~~ deposits, or conceals, or is concerned in removing, ~~depositing~~ depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property which is subject to attachment or garnishment for payment of taxes, with intent to evade or defeat the assessment or collection of any tax ~~imposed by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title, that is subject to administration and enforcement by the Department of Finance and imposed under the Delaware Code.~~

(b) This section does not apply to any matter arising out of, document required by, or tax imposed under § 3002 and Chapters 51 and 52 of this title.

§ 575. Period of limitations on criminal prosecutions: jurisdiction.

No person shall be prosecuted, ~~tried~~ tried, or punished for any of the various offenses arising under this subchapter unless the prosecution of such person is instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years for offenses arising under §§ 571, 572 and 574 of this title. If an offense is the failure to do an act required ~~by or under this title or Title 4~~ under the Delaware Code to be done before a certain date, the period of limitation for such offense shall commence on such date for purposes of this subchapter, the failure to do any act required ~~by or under this title or Title 4~~ under the Delaware Code shall be deemed an act committed in part at the principal office of the Division of Revenue in New Castle County. The Superior Court in and for any county where the person to whose liability the proceeding relates resides or has a place of business or in any county in which the offense is alleged to have

been committed shall have original jurisdiction, exclusive of any inferior court or any court of special jurisdiction, over any prosecution under this subchapter.

Section 4. Amend Subchapter VI, Chapter 5, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 582. Lodging tax collection.

The Director of Revenue may enter or exit an agreement with a county to coordinate the collection of the local lodging tax imposed under § 8112 of Title 9.

Section 5. Amend § 1109, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1109. Itemized deductions.

(a) *General.* — In determining taxable income under this chapter, in lieu of the standard deduction provided by § 1108 of this title, a resident individual may elect to deduct the sum of the itemized deductions claimed on the federal income tax return as shall be permitted under the laws of the United States as the same are or shall become effective for any taxable year in determining the federal taxable income, or, if the person does not itemize deductions or elects the credit for foreign taxes paid on the federal return, the person may deduct the sum of the itemized deductions to which the person would have been entitled had the person itemized the deductions (including the deduction for foreign taxes paid) on the federal return, as follows:

(1) Reduced by all of the following:

c. The amount of medical expenses paid by the donor associated with human organ or bone marrow donation, in which the donor claimed a tax credit for such medical expenses under § 1118 of this title.

Section 6. Amend Chapter 20 E, Title 30 of the Delaware Code and Subchapter II, Chapter 11, Title 30 of the Delaware Code by transferring § 20E-103 from Chapter 20E to Subchapter II, Chapter 11, Title 30 and making deletions as shown by strike through and insertions as shown by underline as follows:

§ 20E-103. 1118. Tax credit for expenses associated with human organ or bone marrow donation.

(a) A donor is allowed as a credit against the ~~tax imposed by Chapter 11 of this title~~ donor's tax otherwise due under this chapter in an amount not to exceed \$10,000 of unreimbursed expenses specified in subsection (b) of this section if, while living, the taxpayer or a dependent of the taxpayer donates 1 or more human organs, or a part thereof, or bone marrow, to another human for human organ transplantation. ~~Notwithstanding anything in Chapter 11 of this title to the contrary, unreimbursed expenses claimed by a donor as a credit against tax as allowed in this chapter may not be included as itemized deductions for the donor as otherwise allowable under Chapter 11 of this title.~~

(f) For purposes of this section, “donor” and “traditional paid time off” mean as defined in § 20E-102 of this title.

Section 7. Amend § 2301, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 2301. Occupations requiring licenses; definitions; fees; exemptions.

(a) “Persons” as defined in § 2701 of this title engaged in the occupations listed and defined in this section shall pay annual license taxes at the rates specified below. In addition to the license fee indicated below, each such person shall pay a fee of \$25 for each additional branch or business location, except that a finance or small loan agency as defined in this section shall pay the basic annual fee for each place of business.

(22) ~~Trailer park~~, Recreational vehicle park, \$10 for each space as specified on a plot plan or as designated by the owner. ~~“Trailer park,” “Recreational vehicle park,”~~ which may also be identified as a ~~recreational vehicle park~~, or a tenting recreation park, includes any person engaged in the business of operating any place where space is furnished for units to park and hook up to or use sanitary and/or electrical facilities. This paragraph ~~(a)(22)~~ (a)(17) shall not apply to mobile home parks.

Section 8. If a provision of this Act or the application of this Act to a person or circumstance is held invalid, the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given effect without the invalid provision or the application of this Act that can be given effect without the invalid application.

SYNOPSIS

This Act makes several changes to the Code relating to the Department of Finance.

Section 1 removes a bond requirement for Division of Revenue officers, agents, or employees for faithful performance of their duties. Sections 2 and 3 enable the Department of Finance and the Division of Revenue to fully administer and enforce taxes where jurisdiction is assigned by the Delaware Code without reference to any specific Title. This avoids the need to revise applicable provisions of Title 30 (by enumerating each applicable title) when changes to the law make the Department responsible for the administration and enforcement of tax and tax-related laws established outside of Title 30. Section 4 provides the Division of Revenue the ability to collect the lodging tax imposed under § 8112 of Title 9 on behalf of a county in the State of Delaware and enter into an agreement with a county in the State of Delaware to coordinate the collection process. Sections 5 and 6 transfer and reorganize the personal income tax aspects of the Organ and Bone Marrow Transplantation Tax Credit statute to appear within the appropriate personal income tax subchapter in Chapter 11 of Title 30. Section 7 replaces the term “trailer park” with “recreational vehicle park” to clarify license procedures.

This Act makes technical changes to existing Code to conform with the Delaware Legislative Drafting Manual.