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GENERAL NOTICE

South African Revenue Service

General Notice

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GENERAL NOTICE

NOTICE 59 OF 2007 SOUTH AFRICAN REVENUE SERVICE

DRAFT REGULATIONS ISSUED UNDER SECTION 13 OF THE SMALL BUSINESS TAX AMNESTY AND AMENDMENT OF TAXATION LAWS ACT, 2006 (ACT NO. 9 OF 2006), PRESCRIBING THE CIRCUMSTANCES UNDER WHICH THE COMMISSIONER MAY WAIVE ANY AMOUNT OF ADDITIONAL TAX, PENALTY OR INTEREST PAYABLE BY SPECIFIC PERSONS

By virtue of section 13 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, I, Trevor Andrew Manuel, Minister of Finance, hereby publish for public comment the draft regulations set out in the Schedule hereto.

These regulations prescribe the circumstances under which the Commissioner for the South African Revenue Service may waive, in whole or in part, any amount of additional tax, penalty and interest payable by a person in terms of certain Acts administered by the Commissioner, where that waiver would facilitate the purpose and objective of the tax amnesty as contemplated in section 1(b) of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 10 of 2006).

Comments on the draft regulations must be furnished on or before **Friday, 9 February 2007**.

Comments must be submitted to:

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T. A. MANUEL
MINISTER OF FINANCE

SCHEDULE

Definitions

1. For purposes of these regulations, unless the context indicates otherwise, any meaning ascribed to a word or expression in the Income Tax Act, 1962 (Act No. 58 of 1962), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Skills Development Levies Act, 1999 (Act No. 9 of 1999), the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), the Small Business Tax Amnesty and Amendment of Taxation Laws Amendment Act, 2006 (Act No. 9 of 2006) and the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 10 of 2006) must bear the meaning so ascribed, and—

“tax amnesty relief” means the tax amnesty relief provided for in Chapter 1 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006;

“business tax debt” means any additional tax, interest and penalty imposed in respect of any amount of—

- (a) income tax, payable in terms of the Income Tax Act in respect of any amount received by or accrued to (or deemed to have been received by or accrued to) a person during the qualifying period from the carrying on of a business
- (b) employees’ tax, payable in terms of the Fourth Schedule to the Income Tax Act, in respect of any remuneration as defined in that schedule paid to employees engaged in the carrying on of any business during the qualifying period;
- (c) value-added tax, payable in terms of the Value-Added Tax Act, in respect of any supply or importation of goods or services during the qualifying period;
- (d) withholding tax on royalties, payable in terms of the Income Tax Act, in respect of any amount paid during the qualifying period to any person who is not a resident;
- (e) secondary tax on companies, payable in terms of the Income Tax Act, in respect of any dividend declared or deemed to be declared for the purpose of section 64B of the Income Tax Act during the qualifying period;
- (f) contributions, payable in terms of the Unemployment Insurance Contributions Act, in respect of any remuneration, as defined in that Act, paid in the course of the carrying on of any business during the qualifying period;
- (g) levies, payable in terms of the Skills Development Levies Act, in respect of any leviable amounts as contemplated in that Act, determined in respect of the qualifying period; and

“waive” in relation to a business tax debt, means to relinquish the right to that business tax debt (or a portion thereof) in terms of these regulations.

Purpose of regulations

2. The purpose of these regulations is to prescribe the circumstances upon which the Commissioner may waive a business tax debt in order to facilitate the purpose and object of the tax amnesty.

Application of regulations

3. These regulations apply in respect of a business tax debt payable by a person who satisfies the requirements as set out in section 2 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, but to whom the tax amnesty relief does not apply as a result of the circumstances contemplated in section 10(b) or (c) of that Act.

Application for waiver

4. A person (hereinafter referred to as "the applicant") applying for the waiver of a business tax debt in terms of these regulations must submit an application to the Commissioner—

- (a) by no later than 31 May 2007; and
- (b) at the address and in the manner and form prescribed by the Commissioner.

Information required in application

5. (1) The applicant must, in the application for waiver, list the category or categories of business tax debt to be waived by the Commissioner.

(2) Subject to subparagraph (3), the applicant must furnish together with the application for waiver or within such period as the Commissioner may allow—

- (a) a statement of all assets (at cost) and liabilities of that applicant as at the end of the 2006 year of assessment; and
- (b) all returns outstanding from that applicant as on 31 December 2006 that have not been furnished before the submission of the application for waiver.

(3) If the applicant has applied for tax amnesty relief and a return would no longer be required were that tax amnesty relief to be granted, the applicant need not furnish that return unless and until that application for tax amnesty relief has been denied.

(4) If it is not possible for the applicant to provide full particulars of any actual amounts in the application or in any return or statement relating to the application, the applicant may

provide reasonable estimates of those amounts and must disclose to the Commissioner that the amounts provided are estimates.

Approval of application to waive business tax debt

6. (1) Subject to paragraph 7, the Commissioner must approve the application for waiver in respect of that applicant if all the requirements of paragraphs 3, 4 and 5 are met.

(2) The Commissioner must deliver to the applicant a notice of his or her decision to approve or deny the application for waiver and must set out the reasons for any decision to deny that application.

Circumstances where not appropriate to waive business tax debt

7. (1) The Commissioner may not waive a business tax debt if, before the submission of the application for waiver—

(a) the Sheriff of the High Court has attached the assets of the applicant in execution of a writ of execution obtained on behalf of the Commissioner in satisfaction of the business tax debt;

(b) sequestration or liquidation proceedings have been instituted against the applicant; or

(c) the Commissioner has delivered a notice to that applicant or that applicant's representative informing that applicant of an audit or investigation relating to any failure by that applicant to comply with any Act administered by the Commissioner.

(2) Subparagraph (1)(c) will not apply if the Commissioner has, before the submission of the application for waiver, delivered a notice that—

(a) the notice contemplated in that subparagraph has been withdrawn; or

(b) the audit or investigation contemplated in that subparagraph has been concluded.

Amount to be waived

8. (1) Subject to paragraph 9, the amount of the business tax debt that must be waived by the Commissioner is the amount of the business tax debt that is outstanding at the close of business on 31 July 2006.

(2) In determining the amount of the business tax debt outstanding at the close of business on 31 July 2006 any credits or refunds due on that date to the applicant in respect of any tax must first be off-set against the business tax debt outstanding on that date.

Amounts that may not be waived

9. The Commissioner may not waive a business tax debt to the extent that—
- (a) the business tax debt exceeds an amount of R1 million; or
 - (b) an amount paid after the close of business on 31 July 2006 in respect of business tax debt or other tax debt outstanding on that date exceeds the amount of other tax debt outstanding on that date.

Agreement setting out conditions of waiver

10. If the Commissioner approves the application for waiver in accordance with paragraph 6, the Commissioner and the applicant must sign an agreement which provides—
- (a) that the balance of the tax debt (if any) together with any interest thereon must be settled by the applicant within six months from date of signature of the agreement or such longer period as the Commissioner may determine; and
 - (b) for any other conditions that the Commissioner may require for purposes of the waiver of the business tax debt.

Commissioner not bound to waiver

11. (1) The Commissioner will not be bound by the waiver if the applicant—
- (a) failed to make full disclosure in the application for waiver of all information required in the application, including any statement or return contemplated in paragraph 5;
 - (b) supplied any materially incorrect information to which the waiver relates; or
 - (c) fails to comply with any condition contained in the agreement contemplated in paragraph 10.
- (2) If the Commissioner is not bound by the waiver as contemplated in subparagraph (1), the Commissioner shall have the right to reinstate the full amount of the business tax debt so waived and calculate interest on that amount as from 1 August 2006 to date of payment of the business tax debt.

Records of tax debts waived

12. (1) The Commissioner must maintain a register of all business tax debts waived in terms of these regulations.
- (2) The register contemplated in subparagraph (1) must contain—

- (a) the details of the applicant, including name, address and tax reference numbers; and
- (b) the amount of the business tax debt waived and the periods to which that business tax debt relates.

Reporting

13. At the time the Commissioner provides the Minister and Auditor-General with a report as contemplated in section 7 of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, the Commissioner must also include, in that report, a summary of all business tax debts waived, in whole or in part, in terms of these regulations during the period covered by the report.
