

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivisions First, Fifteenth, and Eighteenth-a of section 171 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Compromises regulations, as published in Chapter XIII of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, such amendments to read as follows:

Section 1. The title of Part 5000 of such regulations is amended to read as follows:

COMPROMISES UNDER SUBDIVISION [EIGHTEEN-A] EIGHTEENTH-A OF
SECTION 171 OF THE TAX LAW

(Statutory authority: Tax Law, section 171)

Section 2. Subdivision (a) of section 5000.1 of such regulations is amended to read as follows:

(a) The Commissioner of Taxation and Finance, [pursuant to section 171, subdivision eighteenth-a, of the Tax Law,] or such person as may be designated by the commissioner, may compromise any civil liability arising under the Tax Law, a law enacted pursuant to the authority of the Tax Law which is administered by the Department of Taxation and Finance, or a law enacted pursuant to the authority of article 2-E of the General City Law, prior to the time the tax or administrative action becomes finally and irrevocably fixed and is no longer subject to administrative review. The Attorney General may compromise any such liability after reference of a case to the Department of Law for prosecution or defense, but prior to the time the tax or the administrative action taken by the Department of Taxation and Finance is no longer subject to judicial review.

Any such liability may be compromised only upon one or both of the following two grounds:

- (1) doubt as to liability; or
- (2) doubt as to collectibility.

Section 3. Section 5000.2 of such regulations is amended to read as follows:

A compromise agreement relates to the entire liability of the taxpayer or other person against whom the administrative action was taken by the Department of Taxation and Finance, including taxes, interest, additions to the tax and penalties, with respect to which the offer in compromise is filed, and all questions of such liability are conclusively settled thereby. Neither the taxpayer nor the Department of Taxation and Finance shall, upon acceptance of an offer in compromise, be permitted to reopen the case for any reason, except upon a showing of fraud, malfeasance or misrepresentation of a material fact. Acceptance of an offer in compromise will not be a ground for compromise regarding other years or periods.

Section 4. Subdivision (a) of section 5000.3 of such regulations is amended to read as follows:

(a) "Form of offers." An offer in compromise shall be filed on [a form] the forms prescribed by the Commissioner of Taxation and Finance [(Form DTF-4)]. The [form is] forms are available from the Commissioner of Taxation and Finance, or from such person as may be designated by [such] the commissioner, upon [written] request [briefly explaining the reason seeking compromise]. An offer in compromise should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. The compromise offer must be in addition to the total amounts previously paid, or collected, against the tax liability being compromised, if any. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or [in the form of a certified check, cashier's check or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any state, territory or possession of

the United States, or by a United States postal, bank, express or telegraph money order] remitted by means, acceptable to the Department of Taxation and Finance, that assures unconditional and final payment, such as certified check, bank check or postal money order.

Section 5. Subdivision (c) of section 5000.3 of such regulations is amended to read as follows:

(c) "Acceptance." An offer in compromise shall be considered accepted only when the taxpayer making the offer is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the Department of Taxation and Finance. Further, as a condition for acceptance of an offer in compromise, the taxpayer must agree that the Department of Taxation and Finance may proceed with any appropriate collection procedures set forth in the Tax Law as if the Commissioner of Taxation and Finance had acquired an assessment no longer subject to administrative or judicial review. The commissioner, or such person as may be designated by the commissioner, may also impose any other conditions, qualifications or limitations for acceptance of an offer that he or she may deem appropriate for a particular case.

Section 6. Section 5000.4 of such regulations is amended to read as follows:

Unless the unpaid amount of tax which was the subject of the administrative action, including any interest, [addition] additions to the tax or penalty, is less than [\$2,500] \$25,000, if an offer in compromise is accepted, there shall be placed on file in the offices of the Commissioner of Taxation and Finance the opinion of the counsel for the Department of Taxation and Finance with respect to such compromise, with the reasons [therefor] therefore . The opinion shall include a statement of:

- (a) the amount of tax and any other issues which may be subject of such compromise;
- (b) the amount of interest, additions to the tax, or penalties imposed on the taxpayer or other person against whom the administrative action was taken by the Department of Taxation and Finance; and

(c) the amount actually paid or required to be paid in accordance with the terms of the compromise.

Section 7. Subdivision (a) of section 5000.5 of such regulations is amended to read as follows:

(a) "Filing." An offer in compromise may only be made after the issuance to the taxpayer of a written notice of the Commissioner of Taxation and Finance advising the taxpayer of a tax deficiency, determination of tax due, assessment, or denial of refund, credit or reimbursement application. [If the offer is made after a request for a conciliation conference is filed with the Bureau of Conciliation and Mediation Services but prior to the execution of a consent or the issuance of a conciliation order (see Part 4000 of this Title), the offer and three conformed copies shall be filed with the conciliation conferee. If the offer is made after a petition for a hearing has been filed in the Division of Tax Appeals but prior to the issuance of a decision by the tax appeals tribunal (see Part 3000 of this Title), the offer and three conformed copies shall be filed with the Law Bureau attorney assigned to the case. At all other times, the offer and three conformed copies shall be filed with the Commissioner of Taxation and Finance, or such person as may be designated by such commissioner, either in person at the offices in Albany or by mail addressed to:

Commissioner of Taxation and Finance

Department of Taxation and Finance

Building 9

W. A. Harriman Campus

Albany, NY 12227]

The taxpayer shall file an offer in compromise as prescribed in the forms.

Section 8. Section 5000.6 of such regulations is hereby repealed.

Section 9. The title to Part 5005 of such regulations is amended to read as follows:

COMPROMISES UNDER SUBDIVISION [FIFTEEN] FIFTEENTH OF SECTION 171
OF THE TAX LAW

(Statutory authority: Tax Law, section 171)

Section 10. Subdivision (a) of section 5005.1 of such regulations is amended to read as follows:

(a) "General." Section 171, [(15th)] subdivision fifteenth, of the Tax Law allows for offers in compromise for any taxes or any warrant or judgment of taxes [imposed by chapter 60 of the Laws of New York State] administered by the Commissioner of Taxation and Finance. Under section 171, [(15th)] subdivision fifteenth, an offer in compromise may only be made where the tax liability has been finally fixed and where the taxpayer has exhausted the taxpayer's protest rights.

Section 11. Paragraph (1) of subdivision (c) of section 5005.1 of such regulations is amended to read as follows:

(1) An offer in compromise must be filed on forms prescribed by the [department of] Commissioner of Taxation and Finance for such purpose at the address prescribed in the forms. The forms are available from the [department upon written or telephone request or may be obtained in person from any district office of the department. The Tax Compliance Division of the department is responsible for receiving and processing all offers in compromise made under this section.] Commissioner of Taxation and Finance, or from such person as may be designated by the commissioner, upon request. An offer in compromise should generally be accompanied by a remittance representing the amount of the compromise offer or a [down payment] deposit if the offer provides for future installments (see paragraph [(d)(3)] (d)(2) of this section). The compromise offer must be in addition to the total amounts previously paid, or collected, against the tax liability being compromised, if any. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or [in the form of a

certified check, cashier's check or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any state, territory or possession of the United States, or in the form of a United States postal, bank, express or telegraph money order.] remitted by means, acceptable to the Department of Taxation and Finance, that assures unconditional and final payment, such as certified check, bank check or postal money order. (See paragraph (e)(3) of this section for a refund of remittance where an offer in compromise is not accepted.)

Section 12. Paragraphs (1) and (4) of subdivision (d) of section 5005.1 of such regulations are REPEALED and paragraphs (2), (3), and (5) of such subdivision are renumbered to be paragraphs (1), (2), and (3) respectively.

Section 13. Paragraphs (1) and (2) of subdivision (d) of section 5005.1 of such regulations, as renumbered by Section 12 of these amendments, are amended to read as follows:

(1)(i) [Upon receipt of a recommendation of acceptance of an offer, the] The commissioner, or such person as may be designated by the commissioner, will accept or reject the offer in compromise and the department will promptly notify the taxpayer in writing of such action.

(ii) Where the tax amount (exclusive of penalty and interest) to be compromised is more than [\$25,000] \$100,000, the offer accepted by the commissioner, or such person as may be designated by the commissioner, must be referred to a justice of the Supreme Court for approval prior to [the commissioner's] notification of acceptance by the commissioner, or such person as may be designated by the commissioner. Such an offer is not effective until approved by a justice of the Supreme Court.

(2) Generally, within 60 days of notification of final approval of an offer, full payment of the compromised amounts must be made to the department. However, where a taxpayer can demonstrate the need for periodic payments over a period of time, the department has the authority to grant a reasonable period of time for

repayment of an offer not to exceed two years[:]. Where special circumstances are demonstrated, the two-year period may be extended at the [commissioner's] discretion of the commissioner or such person as may be designated by the commissioner. In the case of periodic payments, interest will be due at the annual rate established under the Tax Law on any deferred amounts of the offer from the date of notice of acceptance until the offer is paid in full.

Section 14. Paragraph (3) of subdivision (e) of section 5005.1 of such regulations is amended to read as follows:

(3) Receiving acceptance of an offer in compromise is a privilege, not a right, available to financially distressed taxpayers in order to put overwhelming tax liabilities behind them. In the event an offer is rejected, the taxpayer making the offer shall be promptly notified in writing. If an offer in compromise is withdrawn or rejected, the amount tendered with the offer shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the [liability] liability with respect to which the offer was filed.

Section 15. These amendments shall take effect on the date the Notice of Adoption is published in the "State Register".

Dated: Albany, New York
July 12, 2005

Andrew S. Eristoff
Commissioner of Taxation and Finance