

ASSESSMENT OF PUBLIC COMMENT

DEPARTMENT OF TAXATION AND FINANCE

Written comments were received on behalf of The Legal Aid Society's Low-Income Taxpayer Clinic regarding proposal TAF-39-13-00008-P, which amends Parts 5000 and 5005 of Title 20 NYCRR.

Chapter 469 of the Laws of 2011 amended the Tax Law to expand the Commissioner's authority to compromise liability for taxes or other impositions administered by the Commissioner to cover situations where collection in full would cause the taxpayer undue economic hardship. In addition, the legislation also provided that no offer in compromise will be acceptable if it would undermine tax compliance or be adverse to the interests of the State (Tax Law, section 171, subdivision fifteenth, as amended.)

The primary purpose of the proposed rule is to define what constitutes undue economic hardship, as required by Chapter 469. In addition, the rule reflects other legislative changes.

The writer indicates, "The proposed provision lacks critical guidance with respect to consideration of criminal convictions, despite the fact that this information is considered by the Department." She states that the Department requests information concerning certain criminal convictions and that, based on her organization's experience, the offers are rejected on public policy grounds if the applicants have the subject criminal convictions. She suggests the rule be amended to preclude automatic rejection of offers based on criminal convictions and to set forth factors to be considered in determining whether to accept the offer in these cases. She cites provisions of Article 23-A of the Correction Law regarding licensure and employment of persons previously convicted of criminal offences.

20 NYCRR section 5005.1(e)(2)(i)(h), which is not being amended by the proposed rule, includes, among examples of reasons an offer in compromise may be rejected, where the tax liability sought to be compromised directly relates to any crime for which the taxpayer has been convicted. The rule does not require

automatic rejection of an offer for any specific reason. While taxpayers seeking to compromise their liabilities are asked to provide information about convictions within the past five years for crimes involving unlawful possession or acquisition of property or income obtained by fraud, theft, or other illegal means, the Department looks at the facts and circumstances of each case in determining whether acceptance of an offer would undermine voluntary compliance or not be in the best interests of the State. Therefore, the Department made no changes to the proposal in response to the comments.