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BY FACSIMILE & REGULAR MAIL

January 30, 2012

The Honorable Thomas H. Mattox
Commissioner of Taxation and Finance
New York State Department of Taxation and Finance
W.A. Harriman Campus, Building 9
Albany, New York 12227

Re: Proposed Draft Regulations For New York State Offers in Compromise

Dear Commissioner Mattox:

The Committee on State and Local Taxation of the Association of the Bar of the City of New York (the "Committee") appreciates the opportunity to comment on the New York State Department of Taxation and Finance's (the "Department") proposed draft amendments to the Offer in Compromise regulations under Parts 5000 and 5005 of Chapter VIII of 20 NYCRR (the "Proposed Regulations"), pursuant to the recent amendments to Section 171 of the New York Tax Law (the "Statutory Amendments"). We are grateful that the Department has recognized difficulties with the existing regulations and has taken steps to provide clearer guidance and broadly implement the public policy goals of the Statutory Amendments that allow the Commissioner to accept a payment of less than the full amount of the liability for tax, interest and penalty, based on a demonstration that collection in full would cause "undue economic hardship."¹

The Committee generally supports the Department's Proposed Regulations and has a few suggested recommendations. The Committee believes that the rules would benefit by more closely conforming the financial analysis necessary to determine "reasonable collection potential" ("RCP")² to the current federal Offer in Compromise guidelines set forth in the Internal Revenue Manual, Section 5.8.5 ("IRM 5.8.5"). Under IRM 5.8.5, for purposes of determining RCP, "assets are valued at net realizable equity (NRE). Net realizable equity is defined as quick sale value (QSV) less amounts owed to secured lien holders with priority over the federal tax lien, if applicable, and levy exemption amounts."³ "QSV is defined as an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the owner to sell in a short period of time, usually 90 calendar days, or less" and is "[g]enerally an amount less than fair market value (FMV)"⁴. In addition, "[n]ormally, QSV is calculated at 80%

¹ N.Y. Tax Law § 171 Fifteenth.

² See Proposed Regulations, Sections 6 & 10.

³ Internal Revenue Manual 5.8.5.4.1(1)(10-22-2010).

⁴ Internal Revenue Manual 5.8.5.4.1(2)(10-22-2010).

of FMV.”⁵ IRM 5.8.5 further provides that auditors should review information provided by the taxpayer to arrive at an appropriate FMV of the property.⁶

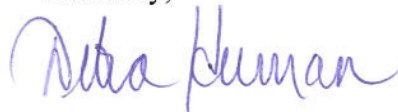
While it is clear that the Proposed Regulations are modeled on the federal Offer in Compromise guidelines set forth in IRM 5.8.5 (i.e., defining “realizable value of the taxpayer’s assets is the amount that could reasonably be expected from the sale of the assets within 90 days or less minus any amount owned to a secured creditor”) we recommend revising the Proposed Regulations to more closely conform to IRM 5.8.5, by adopting the NRE and QSV terms and definitions. We believe such changes will remove any uncertainty as to whether a different test is required at the state level, than at the federal level. New York taxpayers are also able to retrieve information relating to the fair market value of their real property from State and City databases, which will improve the ability of the taxpayer to provide more accurate information and reduce administrative costs associated with Department investigation relating to the valuation of such assets.

The Proposed Regulations appear to minimize the harshness of the current rules that limit the number of offers to one, by adding the word “generally” to the provision, to state “[g]enerally, a taxpayer may only make one offer in compromise regarding a particular liability for a particular taxable period”⁷ The Committee recommends that the Regulations further include an ability to perfect an offer that has been submitted before the offer is formally rejected or withdrawn by the taxpayer, by adding language to the effect that a revised offer submitted in an attempt to reach an acceptable offer with the Department should not be considered a second offer for these purposes.

The Proposed Regulations also provide (the current rule) that “the department may reconsider an offer that was previously denied due to a misrepresentation or misunderstanding on the part of the department of the information contained in such offer.”⁸ The Committee recommends expanding the criteria for reconsiderations of offers that are denied to conform with the criteria set forth in the federal Offer in Compromise Guidelines in Internal Revenue Manual, Section 5.8.7.3.1, including but not limited to serious illness or injury prevented the taxpayer from submitting the information timely or there was a death in the taxpayer’s immediate family that prevented timely mailing of the information. We believe that expansion of the criteria for reconsideration of rejected offers is consistent with the goals of the Statutory Amendments.

We applaud the Department’s efforts to make the State’s Offer in Compromise Program a meaningful vehicle for taxpayers to obtain tax relief. We would be happy to participate in further discussions regarding these comments. Thank you for your consideration.

Sincerely,



Debra S. Herman
Chair

Cc: Jamie Woodward
Executive Deputy Commissioner of Taxation and Finance
Department of Taxation and Finance

⁵ Internal Revenue Manual 5.8.5.4.1(3)(10-22-2010).

⁶ Internal Revenue Manual 5.8.5.4.1(2)(10-22-2010).

⁷ See Proposed Regulations, Section 4 (amending Part 5000.3(f)).

⁸ See Proposed Regulations, Section 12 (Part 5005.1(c)(4)).

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