



Changes to the Offer In Compromise Program

This memorandum explains recently enacted legislation that reformed the Tax Department's Offer in Compromise Program by expanding the eligibility for taxpayers to participate in the program and making certain other technical changes.

The Tax Law was recently amended to expand the eligibility of taxpayers to participate in the Tax Department's Offer In Compromise Program. These changes are effective August 17, 2011.

Under the new law, eligibility to participate in the Offer In Compromise Program has been expanded to include individual taxpayers who can prove that collection in full of any liability administered by the Tax Department will cause the taxpayer undue economic hardship. This expanded eligibility to participate in the Offer In Compromise Program is in addition to the existing criteria that allow a taxpayer to participate if the taxpayer has been discharged in a bankruptcy proceeding or is proven to be insolvent. As under the statute prior to this change, approval by a justice of the New York State Supreme Court is required for fixed and final liabilities where the amount to be compromised is over \$100,000, exclusive of penalties and interest. With respect to liabilities that are not fixed and final, the new law modernizes the language of these provisions and raises the threshold for requiring an Opinion of Counsel before an offer can be finalized to \$50,000 or more, including penalty and interest.

The new law requires the Commissioner of Taxation and Finance to issue regulations defining what constitutes undue economic hardship. The Tax Department is currently in the process of developing those regulations. Although the new law does not define the situations that qualify as undue economic hardship, it does specify that the inability to maintain an affluent or luxurious lifestyle **does not** constitute undue economic hardship. Further information about these changes to the Offer in Compromise Program will be posted to the Tax Department's Web site, at www.tax.ny.gov, when available.

The amendments also provide that no offer in compromise will be acceptable if it would undermine tax compliance by other taxpayers or be adverse to the best interests of the State. In addition, the new law eliminates the requirement that the amount payable through an offer in

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TSB-M-11(9)I
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compromise must be at least the amount recoverable through legal proceedings. Under the amendments, the amount payable through an offer in compromise is an amount that reasonably reflects collection potential or is otherwise justified by proofs offered by the taxpayer.

(Chapter 469 of the Laws of 2011, Tax Law section 171(Fifteenth) and (Eighteenth-a))

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