

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 and Fourteenth of section 171 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Procedural Regulations, as published in Chapter IX 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 The statutory authority cited in the heading of Part 2399 of the regulations is REPEALED, and a new citation is added to read as follows:

(Statutory authority: Tax Law, section 171)

Section 2. Section 2399.1 of the regulations is amended to read as follows:

Section 2399.1 Application. Except as otherwise provided by law or this Title, the provisions of this Part [shall] apply to any tax [which] that is administered by the commissioner and [which] that is imposed by or authorized to be imposed pursuant to the Tax Law, [article 2-E of the General City Law, or section 27-0923 of] the Environmental Conservation Law, the County Law, or any other applicable laws concerning matters under the jurisdiction of the commissioner. Any reference to tax or taxes in this Part shall include special assessments, fees, and other impositions [which] that are administered by the commissioner. This Part does not apply to the Division of Tax Appeals or to the Bureau of Conciliation and Mediation Services within the Division of Taxation. (See Parts 3000 and 4000 of this Title for mailing rules applicable to petitions in the

Division of Tax Appeals and requests for conciliation conferences in the Bureau of Conciliation and Mediation Services of the Division of Taxation, respectively.)

Section 3. The heading of section 2399.2 of the regulations is amended to read as follows:

Section 2399.2 Timely mailing, filing, and paying. (Tax Law, sections 171, 289-d, 434-a[(1), 475], 514-a[(1)], 691(a), [962,] 1091(a), 1147(a)[(2)], 1419(b), art. 11[, art. 31-B])

Section 4. Paragraph (1) of subdivision (a) of section 2399.2 of the regulations is amended to read as follows:

(a)(1)(i) In general, where any document required to be filed with, or payment required to be made to, the Department of Taxation and Finance (or, for purposes of article 11 of the Tax Law, the appropriate recording officer) within a prescribed period or on or before a prescribed date is delivered in the manner and time provided in this section by United States mail to the appropriate address after the prescribed period or date, the date of the United States postmark as stamped on the envelope or other wrapper in which such document or payment is contained will be deemed to be the date of filing or paying.

(ii) Any reference in this section to the United States mail shall be treated as including a reference to any delivery service that has been designated by the commissioner or by the Secretary of the Treasury of the United States pursuant to section 7502 of the Internal Revenue Code (unless the commissioner determines such delivery service is not adequate to meet the needs of the State), and any reference to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in such section of the Internal Revenue Code by a designated delivery service. Where delivery is made by courier, delivery messenger, or similar service that has not been so designated, the date of receipt by the department will be deemed to be the date of filing or paying.

Section 5. Subdivision (d) of section 2399.2 of the regulations is amended to read as follows:

(d)(1) The term “document,” as used in this section, means any return, report, declaration of estimated tax, claim, statement, notice, application, affidavit, or other document required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of the applicable [tax] article of the Tax Law or other applicable laws concerning matters under the jurisdiction of the commissioner. [() Provided, however, [the provisions of this section shall not be applicable to questionnaires and attachments filed by transferors and transferees in accordance with the pre-audit procedure set forth in section 1447(2) of the Tax Law. These questionnaires must be received by the Department of Taxation and Finance at least 20 days prior to the date of transfer.) Furthermore,] such term does not include any document that is permitted or required [under any provision] in conjunction with an electronic funds transfer pursuant to section 9 or section 10 of the Tax Law [or this Title to be filed or delivered by any method other than mailing. (See] — see Part [537] 2396 and Part 2397, respectively, of this Title [for mailing rules with respect to bulk sales].)]

(2) The term “payment,” as used in this section, means any payment (or fee) required to be made (or paid over) within a prescribed period or on or before a prescribed date under the authority of any provision of the applicable article of the Tax Law or other applicable laws concerning matters under the jurisdiction of the commissioner. However, the term does not include any remittance unless the amount thereof is actually received by the Department of Taxation and Finance (or appropriate recording officer, where applicable). For example, if a check is used as a form of payment, this section does not apply if such check is not received[,] or, if received, is not honored upon presentment. Furthermore, such term does not include any [payment that is required under any provision of the Tax Law or this Title to be made by any method other than mailing. (Accordingly, this section does not apply to any] electronic [fund] funds transfer pursuant to section 9 or section 10 of the Tax Law — see Part 2396 and Part 2397, respectively, of this Title.)]

Section 6. A new subdivision (e) is added to section 2399.2 of the regulations to read as follows:

(e) “Timely filed electronic documents.” (1) Notwithstanding any other provision of this Title and except in the case of an electronic funds transfer pursuant to section 9 or 10 of the Tax Law, any document that is filed electronically with the department (or with the department’s designee) in the manner and time provided by the commissioner is deemed to be filed on the date of the electronic postmark. Thus, if the electronic postmark is timely, the document is considered filed timely although it is received after the last date prescribed for filing.

(2) (i) For purposes of this subdivision and except as provided in paragraph (3), the term “electronic postmark” means a record of the date and time (in a particular time zone) that an authorized electronic return transmitter receives the transmission of a taxpayer's electronically filed document on its host system. However, if the taxpayer and the electronic return transmitter are located in different time zones, it is the taxpayer's time zone that controls the timeliness of the electronically filed document. That is, the date and time that the transmitter receives the transmission are converted to the date and time in the taxpayer’s time zone.

(ii) An “electronic return transmitter” is a person or other entity that transmits electronic documents directly to this department or directly to the Internal Revenue Service for forwarding to this department. A tax preparation service, electronic return originator, software developer, or other person or entity that does not transmit documents directly to this department or directly to the Internal Revenue Service for forwarding to this department is not an electronic return transmitter. The commissioner or the Commissioner of the Internal Revenue Service (as the case may be) may enter into an agreement with an electronic return transmitter or prescribe in forms, instructions, or other appropriate guidance the procedures under which the electronic return transmitter is authorized to provide taxpayers with an electronic postmark to acknowledge the date and time that the electronic return transmitter received the electronically filed document.

(3) If a taxpayer electronically files a document directly with this department, directly with the Internal Revenue Service for forwarding to this department, or directly or indirectly with an electronic return transmitter

and no electronic postmark is assigned by the transmitter, the electronic postmark is deemed to be the record of the date and time that the department receives the transmission of the taxpayer's electronically filed document. If it can be established by the taxpayer or otherwise that the Internal Revenue Service received the transmission of a New York State document at an earlier date and time, the electronic postmark will be considered such earlier date and time. In either case, it is the taxpayer's time zone that controls the timeliness of the electronically filed document.

Section 7. A new subdivision (f) is added to section 2399.2 of the regulations to read as follows:

(f) "Timely payments by electronic funds withdrawal, credit card, and debit card." (1)(i)

Notwithstanding any other provision of this Title and except in the case of an electronic funds transfer pursuant to section 9 or 10 of the Tax Law, any payment that is made by electronic funds withdrawal in the manner provided by the commissioner is deemed to be made on the date that the taxpayer specifies as the date for withdrawal provided that the date specified is not beyond the last date prescribed for payment, the funds are available for withdrawal on such date, and the document to which the funds apply is filed timely in accordance with this Part. Therefore, if a document is filed on or before the prescribed due date, any applicable payment by electronic funds withdrawal is considered to be timely made if the funds are available and the taxpayer specifies any date up to and including the due date as the date for withdrawal of the funds. If no date for withdrawal of the funds is specified by the taxpayer, payment is deemed to be made on the last date prescribed for such payment.

(ii) If the document to which the funds apply is not filed timely in accordance with this Part, any prior payment that is made by electronic funds withdrawal in the manner provided by the commissioner on or before the last date prescribed for paying is deemed to be timely made provided such payment can be associated with the proper tax liability, as evidenced by the taxpayer.

(2) Notwithstanding any other provision of this Title, any payment that is made by credit card or debit card in the manner provided by the commissioner is deemed to be made on the date that the issuer of the card properly authorizes the transaction provided that the payment is actually received by the department in the ordinary course of business and is not returned due to correction of errors relating to the credit card account or debit card account. Accordingly, a payment made by credit or debit card is considered to be timely if the issuer properly authorizes the payment on or before the last date prescribed for paying and such payment is received by the department in the ordinary course of business for such a transaction and is not returned.

Section 8. The heading of section 2399.3 of the regulations is amended to read as follows:

Section 2399.3 Saturdays, Sundays, and legal holidays. (Tax Law, sections 171, 289-d(3), 434-a(3), [475] 514-a(2), 691(c), [962,] 1091(c), 1147(a)(3), 1419(c))

Andrew S. Eristoff
Commissioner of Taxation and Finance

Dated: Albany, New York
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