

STATEMENT OF CONSENSUS RULE MAKING DETERMINATION

DEPARTMENT OF TAXATION AND FINANCE

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because it merely repeals regulatory provisions that are no longer applicable, conforms to non-discretionary statutory changes, and makes technical changes that are not controversial in nature.

Prior to September 1, 1989, and except as otherwise specifically provided by law, “[t]he tax commission, by regulation, set the rates of interest” (e.g., Tax Law, former section 697[j]). The rates in effect for periods prior to September 1989 are set in what is now Part 2393 of the Procedural Regulations, as published in Chapter IX of 20 NYCRR. Chapter 61 of the Laws of 1989 amended the Tax Law (and other applicable laws) to prescribe by statute the methods for determining the overpayment and underpayment rates of interest and to provide that such rates are to be published quarterly in the section for miscellaneous notices of the *State Register* without promulgation by regulation. Part 2393, with the exception of section 2393.1(e)(1), is now obsolete and is being repealed. Section 2393.1(e)(1), which reflects the 1989 statutory changes, is being retained and technically updated.

Part V-1 of Chapter 57 of the Laws of 2009, among other tax compliance measures, increased the underpayment rates of interest and amended the computation of civil penalty charges for fraud with respect to various taxes (see Subparts D and J, respectively). The primary purpose of this rule is to update the department’s regulations where necessary to defer to revised Part 2393 and the Tax Law for this (and overpayment rate) information since interest rates and penalty charges are often subject to change. The rule also makes editorial changes to the affected regulations.