

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision 3-a of section 170 and subdivision First of section 171 of the Tax Law, the Acting Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Bureau of Conciliation and Mediation Services Regulations, as published in Chapter XII of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Subdivision (e) of section 4000.1 is amended to read as follows:

(e) “Request, requester.” The term “request” means the [written] application for a conciliation conference. The term “requester” means the person who files a request (see section 4000.3 of this Part).

Section 2. Subdivision (a) of section 4000.3 is amended to read as follows:

(a) “Filing of request.” (1) Any person who has received a statutory notice may request a conciliation conference using the form prescribed by the department or by filing a written request[, and one conformed copy,] with the Bureau of Conciliation and Mediation Services, either in person at the offices in Albany or by mail addressed to:

Bureau of Conciliation and Mediation Services

Department of Taxation and Finance

Building 9

W. A. Harriman Campus

Albany, New York 12227

(2) A request for a conciliation conference regarding the denial of an application for a license, permit or registration, or the cancellation, suspension or revocation of a license, permit or registration, shall be addressed to the director of the Bureau of Conciliation and Mediation Services. [The request shall]

(3) Requests should be typewritten, if possible, and should include the information set forth in paragraph (b)(1) of this section. Because the conciliation conference provides an informal and inexpensive way to resolve controversies without the need for a hearing, it is strongly recommended that a request for a conciliation conference be filed prior to the filing of a petition with the Division of Tax Appeals.

(4) In addition to the methods prescribed in paragraph (1) above, a person who has received a statutory notice may request a conciliation conference with the Bureau of Conciliation and Mediation Services in any other manner as prescribed by the department.

Section 3. Paragraph 2 of subdivision (b) of section 4000.3 is REPEALED and paragraph (3) is renumbered paragraph (2).

Section 4. Section 4000.4 is amended to read as follows:

Section 4000.4 Compromise.

If, during a conciliation conference proceeding, a requester wants to compromise his tax liability pursuant to the provisions of Part 5000 of this Title, the requester shall submit his or her offer in compromise to the conciliation conferee. If the offer is based on doubt as to liability, the conciliation conferee shall forward the requester's offer to the counsel for the Department of Taxation and Finance. If the offer is based on doubt as to collectability, the conciliation conferee shall forward the requester's offer to the director of the [Tax Compliance] Collections and Civil Enforcement Division. Thereafter, the provisions of Part 5000 of this Title shall apply to the offer.

Section 5. Paragraph (3) of subdivision (b) of section 4000.5 is amended to read as follows:

(3) Where a requester fails to appear personally or by representative and where an adjournment has not been granted, the conciliation conferee may issue a conciliation order dismissing the request for nonappearance. Upon written application filed within 30 days after the issuance of a conciliation order dismissing the timely request, such order may be vacated and a conciliation conference scheduled where the requester shows a reasonable excuse for the nonappearance. In the alternative, the requester may file a petition with the Division of Tax Appeals (see Part 3000 of this Title) within [90 days after the conciliation order dismissing the timely request is issued] the time limitations prescribed by section 170.3-a(e) of the Tax Law.

Section 6. Paragraph 4 of subdivision (c) of section 4000.5 is amended to read as follows:

(4) In the absence of a showing of fraud, malfeasance or misrepresentation of a material fact, such order will be binding on the Division of Taxation and the requester. However, a conciliation order will not be binding on the requester if such person petitions for a hearing concerning the statutory notice within [90 days after the conciliation order is issued] the time limitations prescribed by section 170.3-a(e) of the Tax Law. The petition must be filed in accordance with section 3000.3 of this Title.

Section 7. Subdivision (b) of section 4000.6 is amended to read as follows:

(b) The receipt of a request for discontinuance shall be acknowledged. The requester will have 90 days from the time the request for discontinuance is filed to petition for a hearing in the Division of Tax Appeals (see Part 3000 of this Title), except that the petition must be filed with the Division of Tax Appeals within 30 days from the time the request for discontinuance is filed if it is related to a written notice as described in section 170.3-a(h) of the Tax Law. The Bureau of Conciliation and Mediation Services will promptly notify the Division of Tax Appeals and any other appropriate divisions or bureaus of the department when a request for discontinuance is filed.

Section 8. Subparagraph (ii) of paragraph (1) of subdivision (a) of section 4000.7 is amended to read as follows:

(ii) In general and except as otherwise provided for in this Chapter or the Tax Law, where any document required to be served or filed within a prescribed period or on or before a prescribed date under the authority of section 170.3-a of article 8 of the Tax Law is, after such period or date, delivered by United States mail to the appropriate address of the Bureau of Conciliation and Mediation Services, the date of the United States postmark as stamped on the envelope or other wrapper in which such document is contained will be deemed to be the date of service or filing. A similar rule applies with respect to certain designated delivery services. See section 2399.2(a)(1) of this Title. Where delivery is made by courier, delivery messenger or similar service that is not a designated delivery service, the date of receipt by the Bureau of Conciliation and Mediation Services will be deemed to be the date of service or filing.

Section 9. Subparagraph (iii) of paragraph (1) of subdivision (a) of section 4000.7 is added to read as follows:

(iii) In addition to the methods prescribed in subparagraph (i) above, requests for a conciliation conference may also be filed with the Bureau of Conciliation and Mediation Services in any other manner as prescribed by the department.

Section 10. Subdivision (d) of section 4000.7 is REPEALED.

DATED: Albany, New York
February 16, 2011

Thomas H. Mattox
Acting Commissioner of Taxation and Finance