

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

Pursuant to the authority contained in subdivision First of section 171 and subsection (a) of section 697 of the Tax Law, the Commissioner of Taxation and Finance hereby makes and adopts 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, to read as follows:

Section 1. Paragraph (1) of subdivision (a) of section 2392.1 of such regulations is amended to read as follows:

(a) (1) Where any person fails to timely file a return, fails to timely pay any taxes due or fails to meet or fulfill any other act or requirement of the Tax Law, thereby subjecting such person to the additions to tax, penalties, or interest penalty imposed pursuant to sections 182-a(10)(b), 289-b(1)(a), 289-b(2), 433(1)(a), 481(1)(a)(i), 512(1)(a), 527(b), 658(c)(4)(C)(i), 685(a), 685(f), 685(h), 685(o), 685(u), 685(v), 685(w), 1085(a), 1085(n), 1085(o), 1145(a)(1)(i), 1145(c), 1145(e), or 1416(b), of the Tax Law, or the interest amount imposed pursuant to section 1145(a)(1)(ii) of such law, the applicable additions to tax, penalties, interest penalty and/or the interest amount, as listed above, must be imposed unless it is shown that such failure was due to reasonable cause and not due to willful neglect. In the event that these amounts have been imposed and it is later determined any such failure was due to reasonable cause and not due to willful neglect, all or part of these amounts will be cancelled. The absence of willful neglect alone is not sufficient grounds for not imposing or for cancelling these amounts.

Section 2. Paragraph (2) of subdivision (i) of such section is amended to read as follows:

(2) [However, the provisions of this section shall not apply to the requirements of] See sections 2396.11 and 2397.7 of this Title for provisions regarding reasonable cause that are applicable to the Electronic Filing and Funds Transfer Program for Certain Taxpayers Remitting Withholding Taxes[, nor to the requirements of] and the Electronic Funds Transfer Program For Certain Taxpayers Remitting Taxes Under and Pursuant to the Authority of articles 12-A, 13-A, 28 and 29 of the Tax Law, provided for by sections 9 and 10, respectively, of the Tax Law. [See sections 2396.11 and 2397.7 of this Title for provisions regarding reasonable cause that are applicable to the programs provided for by such sections 9 and 10, respectively.]

Section 3. Subparagraph (iv) of paragraph (2) of subdivision (c) of section 2396.11 of such regulations is amended to read as follows:

(iv) the circumstances set forth in section [102.7] 2392.1 of this Title, to the extent applicable.

Section 4. Subparagraph (iv) of paragraph (3) of subdivision (b) of section 2397.7 of such regulations is amended to read as follows:

(iv) the circumstances set forth in section [416.3 or section 536.5] 2392.1 of this Title, as applicable.

Dated: Albany, New York
January 4, 2005

Andrew S. Eristoff
Commissioner of Taxation and Finance