

SUBSTANCE OF THE PROPOSED RULE

DEPARTMENT OF TAXATION AND FINANCE

This proposal contains amendments to Parts 2396 (withholding tax-Article 22 of the Tax Law) and 2397 (Articles 12-A, 13-A, 28 and 29 of the Tax Law) of the regulations of the Department of Taxation and Finance concerning electronic funds transfer (“EFT”). The EFT system is used by taxpayers to remit payments of taxes due and is the required mode of payment for large payors. The primary purpose of the amendments is to update the regulations to reflect the Department’s enhanced EFT system (under a new banking services contract) which is planned for implementation sometime in 2006.

Besides addressing the upcoming changes in the EFT program, the amendments include other updating changes. Also, some unnecessary provisions, and provisions which are better suited for inclusion in the program material which is sent to participants, have been deleted.

Some of the specific amendments contained in the proposal are the following:

- changing the definitions sections of both Parts 2396 and 2397 to remove those definitions already contained in the Tax Law and referring readers to the law for those terms;
- conforming the common definitions in the Parts to each other; for example, the term “business day” is defined to mean a day other than Saturday, Sunday or certain holidays, which is consistent with how the term has been defined in practice for the program for both withholding tax and the other taxes;
- allowing voluntary participants in the program to opt out of the program at a later date (10 days before the end of the program period, if done in writing, or the last day of the period, if done online) than is currently allowed;
- adding specific language providing that the Department may exercise its statutory authority and limit the selection of payment options available to voluntary participants; this is current

Department policy (currently, only ACH credit and ACH debit are available to withholding tax voluntary participants) but was not addressed in the previous regulations;

- reflecting the current Department policy of keeping participants, whose status has changed and who are no longer required to participate, enrolled in the program unless they choose not to participate, instead of having a re-enrollment process;
- repealing the current provisions concerning the Department's mailing of advices of deposit or payment and substituting provisions reflecting the enhanced system's greater use of the program's web site; acknowledgement of payment will be provided by a record of deposits in a participant's online account but participants may also request that the Department mail an advice of deposit or payment to them;
- conforming the regulations to existing policy by providing that taxpayers in the program who pay by certified check can deliver their certified check to the Department by the due date instead of by the second business day prior to the due date (as provided in Part 2396); and
- repealing and replacing the provisions concerning changing payment options to reflect the greater flexibility allowed by the enhanced system; participants will be allowed to change their payment option at any time instead of at prescribed times.