

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, subdivisions First, Fifteenth, and Eighteenth-a; and 1096(a); and L. 2011, ch 469. Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations consistent with law that may be necessary for the exercise of the commissioner's powers and the performance of the commissioner's duties under the Tax Law. Section 171, subdivision Fifteenth of the Tax Law authorizes the commissioner to compromise liability in certain circumstances. Chapter 469 of the Laws of 2011 amended subdivision Fifteenth to expand the commissioner's authority to compromise liability to cover situations where collection in full would cause the taxpayer undue economic hardship. As amended, subdivision Fifteenth further provides that the commissioner shall promulgate regulations defining what constitutes undue economic hardship. Section 171, subdivision Eighteenth-a, authorizes the commissioner to compromise liability prior to the time it is finally fixed, with such qualifications and limitations as may be established pursuant to rules and regulations. Section 1096(a) authorizes the commissioner to make such rules and regulations as are necessary to enforce the Franchise Tax on Business Corporations imposed by Article 9-A of the Tax Law.

2. Legislative objectives: The rule is being proposed to administer statutory amendments made by Chapter 469 of the Laws of 2011 that expand the eligibility of taxpayers that can participate in the Tax Department's offer in compromise program to include individual taxpayers who can show that collection in full of any tax or other imposition administered by the Tax Department will cause the taxpayer undue economic hardship. The rule amends Parts 5000 and 5005 of the department's regulations relating to offers in compromise and delineates the circumstances that constitute undue economic hardship for individuals. The rule

also repeals an outdated and unnecessary provision of the business corporation franchise tax regulations relating to offers in compromise.

3. Needs and benefits: Prior to amendment by Chapter 469 of the Laws of 2011, section 171, subdivision Fifteenth authorized the department to compromise liability in limited circumstances where the taxpayer was discharged in bankruptcy or insolvent. The amount payable in compromise could not be less than the amount that the department could recover through legal proceedings. These provisions restricted the department's ability to resolve overwhelming tax liabilities of taxpayers experiencing extreme economic hardship. The department sought legislation, which was enacted as Chapter 469, to allow the commissioner to accept offers in compromise that reasonably reflect collection potential and offers in compromise where collection in full would cause undue economic hardship. The statutory modifications allow the Tax Department to bring more distressed taxpayers into the offer in compromise program. The rule provides standards for what constitutes undue economic hardship to promote consistent application of the law. In addition, the rule removes obsolete and dated provisions, including provisions requiring an upfront payment of the full offer amount, or a deposit if the offer provides for future installments, upon submission of the offer. A draft of the rule was submitted to, among others, the Tax Section of the New York State Bar Association and the Committee on State and Local Taxation of the Association of the Bar of the City of New York. Both of these organizations, while making technical suggestions, indicated their support for the regulations. The Tax Section commended the department for the quality and content of the draft, noting that the amendments "incorporate the letter and spirit of the law." Similarly, the Committee on State and Local Taxation stated it was grateful that the department has recognized difficulties in the existing regulations and has taken steps to provide clearer guidance and broadly implement the public policy goals of the statutory amendments.

4. Costs:

(a) Costs to regulated persons: There are no costs imposed on regulated parties associated with the

implementation and continued compliance with this rule.

(b) Costs to the State and its local governments including this agency: It is estimated that the implementation and continued administration of these amendments will not impose costs on the Department of Taxation and Finance. Additionally, there are no costs to New York State and its local governments for the implementation and continued administration of this rule. It should be noted however, that as a result of Chapter 469 of the Laws of 2011, increased staff time has been needed to process the increased number of offers.

(c) Information and methodology: These conclusions are based on analysis of the regulation and the statutory changes, and discussions with and information received from the department's Taxpayer Guidance Division, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Counsel, Collections and Civil Enforcement Division, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district or other special district.
6. Paperwork: These amendments do not impose any new paperwork or reporting requirements.
7. Duplication: These amendments do not duplicate any existing Federal or State requirements.
8. Alternatives: Statutory amendments required changes to the rule and a definition of what constitutes undue economic hardship. The rule generally conforms to similar federal provisions for compromising federal tax liability. An alternative would be not to look to federal definitions. It was determined that it was better to rely on well-established federal provisions where appropriate. Another alternative considered, based on a suggestion from the Tax Section of the NYS Bar association, would be to discount to present value the amount that could reasonably be expected to be collected from the taxpayer's anticipated future income for purposes of determining the amount acceptable in the case of a cash offer. The statute provides that the amount payable in

compromise must reasonably reflect collection potential or be otherwise justified by proofs offered by the taxpayer. In determining reasonable collection potential, the rule limits the period of time that the department will look at future income generally to no more than ten years, unless there are circumstances indicating that a significant recovery can reasonably be expected if a longer period is used. While the department may consider present value in evaluating an offer, it does not believe that the concept of reasonable collection potential should be adjusted in all cases where the offer is a cash offer. It is noted, however, that cash offers (amounts paid in 90 days or less), do not incur the additional interest that is imposed on installment payments, and that additional guidance was added as to the length of time that would generally be considered in determining the reasonable collection potential from anticipated future income.

9. Federal standards: The rule does not exceed any minimum standards of the Federal government for the same or similar subject areas. The rule was modeled, where appropriate, on the federal offer in compromise program for federal taxes.

10. Compliance schedule: No time is needed in order for regulated parties to comply with this rule. The amendments will take effect on the date the Notice of Adoption is published in the *State Register*.