

STATEMENT OF REASONED JUSTIFICATION FOR MODIFICATION OF THE RULE

DEPARTMENT OF TAXATION AND FINANCE

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 7, 2009, *State Register* a list of rules that were adopted by the Commissioner of Taxation and Finance in 1999 and 2004 and a notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. This information was also posted on the department's Web site (<http://www.tax.ny.gov/rulemaker/fiveyearrev2009.htm>) on December 30, 2008. Comments from the public concerning the continuation or modification of these rules were invited until February 23, 2009.

One of the 1999 rules included in this list added Part 5005 to the Compromises regulations, as published in Chapter XIII of Title 20 NYCRR. The rule, which codified the department's policy in relation to offers in compromise (OIC's) of fixed and finally determined tax liabilities, was adopted by the commissioner on June 15, 1999, and published in the *State Register* on June 30, 1999 (I.D.# TAF-17-99-00005-A).

As a result of the department's 2004 review, it was determined that modifications should be made because of statutory amendments that were enacted by Chapter 513 of the Laws of 2002. The rule was subsequently amended in 2005 to reflect these statutory amendments.

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 6, 2010, issue of the *State Register* a list of rules that were adopted by the Commissioner of Taxation and Finance in 2000 and 2005, and a notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. On December 31, 2009, this information was also posted on the department's Web site (<http://www.tax.ny.gov/rulemaker/fiveyearrev2010.htm>). The public was invited to submit comments concerning the continuation or modification of these rules by February 22, 2010.

The 2005 rule, which amended 20 NYCRR Part 5000 (Compromises under Subdivision Eighteenth-A of Section 171 of the Tax Law) and Part 5005 (Compromises under Subdivision Fifteenth of Section 171 of the Tax Law) to reflect statutory amendments and existing department policy and to make other technical corrections concerning offers in compromise, was adopted September 16, 2005, and published in the *State Register* on October 5, 2005 (ID# TAF-30-05-00004-A).

As a result of its 2009 and 2010 reviews, the department has determined that some of the sections that were added in 1999 and amended in 2005 should not be continued without modification because of recent substantive statutory amendments.

The underlying statutory amendments were enacted by Chapter 469 of the Laws of 2011. Under Chapter 469, the Tax Department's Offer in Compromise Program is expanded to include individual taxpayers who can show that collection in full of any tax or other imposition administered by the Tax Department will cause undue economic hardship. The purpose of this rule is to update the regulations to reflect these statutory changes and to define what constitutes undue economic hardship, as required by Chapter 469.