

## ASSESSMENT OF PUBLIC COMMENT

### DEPARTMENT OF TAXATION AND FINANCE

A written comment was received regarding TAF-17-99-00005-A, which amended 20 NYCRR Part 5005 and was part of the listing of rules to be reviewed by the department in 2009, as published in the *State Register* on January 7, 2009.

The comment concerns allowing financially distressed taxpayers the opportunity to file an offer in compromise based on hardship, similar to the Internal Revenue Service. 20 NYCRR 5005 pertains to compromises under subdivision fifteen of section 171 of the Tax Law. At the time the comment was received, subdivision fifteen of section 171 specifically provided the amount payable in compromise could “in no event be less than the amount, if any, recoverable through legal proceedings”. The Tax Law did not allow the acceptance of an offer in compromise based on hardship and a statutory amendment was first needed to allow the acceptance of an offer of an amount less than the amount recoverable through legal proceeding in the case of hardship.

The department sought legislation to allow the commissioner to accept offers in compromise where collection in full would cause undue economic hardship. As a result, Chapter 469 of the Laws of 2011 amended the Tax Law to eliminate the requirement that the amount payable through an offer in compromise must be at least the amount recoverable through legal proceedings and authorized the commissioner to compromise liability where a taxpayer shows that collection in full would cause the taxpayer undue economic hardship. The rule provides standards for what constitutes undue economic hardship for individuals to promote consistent application of the law. In addition, the rule removes obsolete and dated provisions, including the former provisions requiring an upfront payment of the full offer amount, or a deposit if the offer provides for future installment, upon submission of the offer.