

## SUBSTANCE OF THE PROPOSED RULE

### DEPARTMENT OF TAXATION AND FINANCE

This rule amends the Compromises Regulations, as published in Chapter XIII of Title 20 NYCRR, in response to legislative changes enacted by Chapter 469 of the Laws of 2011.

Chapter 469 of the Laws of 2011 amended the Tax Law to expand the commissioner's authority to compromise liability to cover situations where collection in full would cause the taxpayer undue economic hardship. The legislation eliminated the requirement that the amount payable through an offer in compromise must be at least the amount recoverable through legal proceedings and provided instead that the amount payable through an offer in compromise is an amount that reasonably reflects collection potential or is otherwise justified by proofs offered by the taxpayer. The legislation also provided that no offer in compromise will be acceptable if it would undermine tax compliance by other taxpayers or be adverse to the interests of the State.

The purpose of this rule is to update the regulations to reflect these legislative changes and to define what constitutes undue economic hardship, as required by Chapter 469.

Section 1 of the rule repeals obsolete section 7-4.5 of the Business Corporation Franchise Regulations based on statutory amendments made by Chapter 469 of the Laws of 2011. In addition, this provision is unnecessary because offers in compromise for all taxpayers are governed by Chapter XIII.

Sections 2 amends section 5000.1 of the Compromises Regulations to provide that a tax or other imposition administered by the commissioner may be compromised if collection in full would cause an individual taxpayer undue economic hardship. The amendments reflect statutory changes made by Chapter 469 of the Laws of 2011, including deletion of an obsolete reference to article 2-E of the General City Law.

Sections 3 and 11 add new sections 5000.1(c) and 5005.1(b)(5), respectively, to reflect the statutory changes that an offer in compromise will not be accepted for any reason where acceptance of the offer would undermine voluntary compliance with the Tax Law or would not be in the best interests of the State.

Sections 4 and 12 amend sections 5000.3 and 5005.1, respectively, to delete obsolete requirements regarding payments, provide that forms are available on the department's Web site, and make other technical amendments.

Section 5 amends section 5000.4 to reflect the statutory change raising the threshold for requiring an opinion of counsel from \$25,000 to \$50,000 and to make other technical amendments.

Section 6 amends section 5000.5(b)(2) to provide for an offer in compromise based on undue economic hardship and to modify the minimum offer requirement to indicate that the amount acceptable in compromise must reasonably reflect collection potential. Reasonable collection potential is based on the total realizable value of the taxpayer's assets and the amount that could reasonably be expected to be collected from the taxpayer's anticipated future income. This section further explains how to value assets and future income.

Section 7 amends section 5005.1(a) to provide that other impositions administered by the commissioner, as well as taxes, may be compromised. The amendments reflect statutory changes made by Chapter 469 of the Laws of 2011.

Section 8 amends section 5005.1(b)(1) to provide for an offer in compromise based on undue economic hardship and to modify the minimum offer requirement to indicate that the amount acceptable in compromise must reasonably reflect collection potential. The amendments reflect statutory changes made by Chapter 469 of the Laws of 2011.

Section 9 adds new paragraph (3) to section 5005.1(b) to provide that being unable to pay reasonable basic living expenses constitutes undue economic hardship. The section further elaborates what expenses are considered basic living expenses, and other factors that support an undue economic hardship determination.

Section 10 amends renumbered section 5005.1(b)(4) to provide that reasonable collection potential is based on the total realizable value of the taxpayer's assets and the amount that could reasonably be expected to be collected from the taxpayer's anticipated future income. This section further explains how to value the assets and future income.

Section 13 amends section 5005.1(e)(2)(i) to add failure to show that collection in full would cause an individual taxpayer undue economic hardship to the reasons that the department may reject an offer in compromise, and clarifies that evidence of conveyance of assets for less than fair market value is another reason that the department may reject an offer in compromise if the conveyance is after the taxpayer has knowledge of the liability.

Section 14 amends section 5005.1(e)(3) to delete language related to obsolete procedures regarding the refunding of money paid on offers that have been withdrawn.