S T A T E O F N E W Y O R K

3945--A

2011-2012 Regular Sessions

I N S E N A T E

March 10, 2011

Introduced by Sen. DeFRANCISCO -- (at request of the Department of Taxation and Finance) -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to reforming the offer-in-compromise program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision fifteenth of section 171 of the tax law, as amended by chapter 513 of the laws of 2002, is amended to read as follows:

Fifteenth. Have authority to compromise any taxes OR OTHER IMPOSITIONS or any warrant or judgment for taxes OR OTHER IMPOSITIONS administered by the commissioner, and the penalties and interest in connection therewith, if the tax debtor has been discharged in bankruptcy, [or] is shown by proofs submitted to be insolvent, [but] OR SHOWS BY PROOFS THAT COLLECTION IN FULL WOULD CAUSE THE TAX DEBTOR UNDUE ECONOMIC HARDSHIP, PROVIDED THAT the amount payable in compromise [shall in no event be less than the amount, if any, recoverable through legal proceedings, and provided that where] REASONABLY REFLECTS COLLECTION POTENTIAL OR IS OTHERWISE JUSTIFIED BY THE PROOFS OFFERED BY THE TAX DEBTOR. PROVIDED, FURTHER, THE COMMISSIONER SHALL NOT ACCEPT ANY AMOUNT PAYABLE IN COMPROMISE THAT WOULD UNDERMINE COMPLIANCE WITH THE TAXES OR OTHER IMPOSITIONS ADMINISTERED BY THE COMMISSIONER, NOR SHALL THE COMMISSIONER ENTER INTO ANY OFFER OF COMPROMISE THAT WOULD BE ADVERSE TO THE BEST INTERESTS OF THE STATE. WHERE the amount owing for taxes OR OTHER IMPOSITIONS or the warrant or judgment, exclusive of any penalties and interest, is more than one hundred thousand dollars, such compromise shall be effective only when approved by a justice of the supreme court. THE COMMISSIONER

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SHALL PROMULGATE REGULATIONS DEFINING WHAT CONSTITUTES UNDUE ECONOMIC HARDSHIP. THE INABILITY TO MAINTAIN AN AFFLUENT OR LUXURIOUS LIFESTYLE SHALL NOT CONSTITUTE UNDUE ECONOMIC HARDSHIP.

S 2. Subdivision eighteenth-a of section 171 of the tax law, as amended by chapter 577 of the laws of 1997, is amended to read as follows:

Eighteenth-a. Have authority to compromise civil liability, with such qualifications and limitations as may be established pursuant to such rules and regulations as the commissioner may prescribe, where such liability arises under [this chapter, or under a law enacted pursuant to the authority of this chapter] A TAX OR OTHER IMPOSITION which is administered by the [department, or under a law enacted pursuant to the authority of article two-E of the general city law] COMMISSIONER, at any time prior to the time the tax, OTHER IMPOSITION or administrative action becomes finally and irrevocably fixed and no longer subject to administrative review. Upon acceptance of an offer in compromise by the commissioner, the matter may not be reopened except upon a showing of fraud, malfeasance or misrepresentation of a material fact. The attorney general may compromise any such liability after reference to the department of law for prosecution or defense at any time prior to the time the tax, OTHER IMPOSITION or administrative action taken by the [department] COMMISSIONER is no longer subject to judicial review. Whenever a compromise is made by the [department] COMMISSIONER of any such liability, there shall be placed on file in the office of the commissioner the opinion of the counsel for such department, with his OR HER reasons therefor, with a statement of: (a) the amount of tax OR OTHER IMPOSITION and any other issues which may be the subject of such compromise, (b) the amount of interest, additions to the tax, or penalty imposed by law on the taxpayer or other persons against whom the administrative action was taken by the department, and (c) the amount actually paid in accordance with the terms of the compromise. Notwithstanding the preceding sentence, no such opinion shall be required with respect to the compromise of any civil liability in which the unpaid amount of tax OR OTHER IMPOSITION which was the subject of the administrative action (including any interest, additions to tax, or penalty) is less than [twenty-five] FIFTY thousand dollars.

S 3. This act shall take effect immediately.