

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:

1 Section 1. Subdivision fifteenth of section 171 of the tax law, as
2 amended by chapter 513 of the laws of 2002, is amended to read as
3 follows:
4 Fifteenth. Have authority to compromise any taxes OR OTHER IMPOSITIONS
5 or any warrant or judgment for taxes OR OTHER IMPOSITIONS administered
6 by the commissioner, and the penalties and interest in connection there-
7 with, if the tax debtor has been discharged in bankruptcy, [or] is shown
8 by proofs submitted to be insolvent, [but] OR SHOWS BY PROOFS THAT
9 COLLECTION IN FULL WOULD CAUSE THE TAX DEBTOR UNDUE ECONOMIC HARDSHIP,
10 PROVIDED THAT the amount payable in compromise [shall in no event be
11 less than the amount, if any, recoverable through legal proceedings, and
12 provided that where] REASONABLY REFLECTS COLLECTION POTENTIAL OR IS
13 OTHERWISE JUSTIFIED BY THE PROOFS OFFERED BY THE TAX DEBTOR. PROVIDED,
14 FURTHER, THE COMMISSIONER SHALL NOT ACCEPT ANY AMOUNT PAYABLE IN COMPROMISE
15 THAT WOULD UNDERMINE COMPLIANCE WITH THE TAXES OR OTHER IMPOSITIONS
16 ADMINISTERED BY THE COMMISSIONER, NOR SHALL THE COMMISSIONER ENTER INTO
17 ANY OFFER OF COMPROMISE THAT WOULD BE ADVERSE TO THE BEST INTERESTS OF
18 THE STATE. WHERE the amount owing for taxes OR OTHER IMPOSITIONS or the
19 warrant or judgment, exclusive of any penalties and interest, is more
20 than one hundred thousand dollars, such compromise shall be effective
21 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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1 SHALL PROMULGATE REGULATIONS DEFINING WHAT CONSTITUTES UNDUE ECONOMIC
2 HARDSHIP. THE INABILITY TO MAINTAIN AN AFFLUENT OR LUXURIOUS LIFESTYLE
3 SHALL NOT CONSTITUTE UNDUE ECONOMIC HARDSHIP.

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

7 Eighteenth-a. Have authority to compromise civil liability, with such
8 qualifications and limitations as may be established pursuant to such
9 rules and regulations as the commissioner may prescribe, where such
10 liability arises under [this chapter, or under a law enacted pursuant to
11 the authority of this chapter] A TAX OR OTHER IMPOSITION which is admin-
12 istered by the [department, or under a law enacted pursuant to the
13 authority of article two-E of the general city law] COMMISSIONER, at any
14 time prior to the time the tax, OTHER IMPOSITION or administrative
15 action becomes finally and irrevocably fixed and no longer subject to
16 administrative review. Upon acceptance of an offer in compromise by the
17 commissioner, the matter may not be reopened except upon a showing of
18 fraud, malfeasance or misrepresentation of a material fact. The attorney
19 general may compromise any such liability after reference to the depart-
20 ment of law for prosecution or defense at any time prior to the time the
21 tax, OTHER IMPOSITION or administrative action taken by the [department]
22 COMMISSIONER is no longer subject to judicial review. Whenever a compro-
23 mise is made by the [department] COMMISSIONER of any such liability,
24 there shall be placed on file in the office of the commissioner the
25 opinion of the counsel for such department, with his OR HER reasons
26 therefor, with a statement of: (a) the amount of tax OR OTHER IMPOSITION
27 and any other issues which may be the subject of such compromise, (b)
28 the amount of interest, additions to the tax, or penalty imposed by law
29 on the taxpayer or other persons against whom the administrative action
30 was taken by the department, and (c) the amount actually paid in accord-
31 ance with the terms of the compromise. Notwithstanding the preceding
32 sentence, no such opinion shall be required with respect to the compro-
33 mise of any civil liability in which the unpaid amount of tax OR OTHER
34 IMPOSITION which was the subject of the administrative action (including
35 any interest, additions to tax, or penalty) is less than [twenty-five]
36 FIFTY thousand dollars.

37 S 3. This act shall take effect immediately.