

8180

2011-2012 Regular Sessions

I N   A S S E M B L Y

June 3, 2011

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Introduced by M. of A. FARRELL -- (at request of the Department of Taxation and Finance) -- read once and referred to the Committee on Ways and Means

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

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

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

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

34 S 3. This act shall take effect immediately.