

TAX SECTION

New York State Bar Association

REPORT ON DEPARTMENT OF TAXATION AND FINANCE'S
UNIFORM PROCEDURE BILL

March 30, 1990

Table of Contents

Cover Letter:..... i

I. OVERVIEW..... 2

II. COMMENTS..... 4

 A. General Scope of Bill 4

 B. General Procedures 4

 1. Notice of Deficiency and Assessment Procedure 4

 2. Interest 6

 3. Limitation on Period-for Assessment 7

 4. Limitation on Period for Refunds 9

 5. Mailing Rules 9

 6. Judicial Review 10

 C. Civil Penalties and Additions to Tax 10

 1. Failure to File/Failure to Pay Tax 13

 2. Accuracy-Related and Civil Fraud Penalties 14

 3. Information Returns 16

 4. Withholding Tax Returns; Sales Tax Returns; Deposits 16

 D. Collection Provisions 18

 E. Effective Date 19

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April 2, 1990

Saul Heckelman, Esq.
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Re: Uniform Procedure Bill

Dear Mr. Heckelman:

Enclosed is a Report on the Department of Taxation and Finance's Uniform Procedure Bill (Departmental Bill No. 857; 1990 Tax Department Legislation Proposal No. 7). The principal draftsman of this Report was James A. Locke.

The Report enthusiastically supports the Bill as a major contribution to bringing badly needed order and simplification to the procedural and administrative provisions of the State tax law. It notes and commends the substantial efforts made in the Bill to improve or correct procedural traps and inequities.

While our Report makes some suggestions to improve this Bill, we enthusiastically support enactment of the Bill this year. If it can be so enacted in 1990 we see no reason why it should only be effective with respect to returns due after January 1, 1992, as now provided. It should be effective, at latest, with respect to returns required to be filed after January 1, 1991.

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The Bill conforms most of the New York State tax procedures to those under the Federal tax laws. Federal conformity has been a longstanding goal of the Tax Section. We hope that this Bill can be adopted in this legislative session.

Very truly yours,

Arthur A. Feder
Chair

AAF/bk
Enclosure

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NEW YORK STATE BAR ASSOCIATION TAX SECTION
COMMITTEE ON NEW YORK STATE MATTERS

REPORT ON DEPARTMENT OF TAXATION AND FINANCE'S
UNIFORM PROCEDURE BILL

March 30, 1990

REPORT
ON DEPARTMENT OF TAXATION AND FINANCE'S
UNIFORM PROCEDURE BILL

Prepared by the
Committee on New York State Tax Matters
New York State Bar Association
Tax Section

March 30, 1990

New York State Bar Association
Tax Section

Committee on New York State Tax Matters

Report On Department Of Taxation And Finance's
Uniform Procedure Bill*

This report is in response to the request of the New York State Department of Taxation and Finance (the "Department") for our comments on its Uniform Procedure Bill (1990 Legislative Proposal No. 7 (the "Bill")) which is designed to unify, simplify and strengthen the procedural and administrative provisions of most taxes administered by the Department.

While this report makes some suggestions to improve this Bill, we enthusiastically support enactment of the Bill this year. If it can be so enacted in 1990 we see no reason why it should only be effective with respect to returns due after January 1, 1992, as now provided. It should be effective, at latest, with respect to returns required to be filed after January 1, 1991.

In 1984 the Tax Section submitted a report ("1984 Report") to the Department on the need for procedural uniformity in the New York Tax Law. Members of the Committee had several meetings with personnel from the Department and staff members from various committees of the Legislature to discuss issues raised in that report. Consequently, in 1988 and 1989 the Department prepared Uniform Procedure Bills on which the Tax Section prepared two reports which favorably commented on the Bills and made several recommendations for improvement. The

* This report was drafted by James A. Locke. Helpful comments were provided by, Robert E. Brown, William L. Burke, Arthur A. Feder, Patrick J. Lane, Raymond N. McCabe, William J. Neild, Arthur R. Rosen and Martha Salzman.

principal recommendations made by the Committee in the 1984 Report and most of the comments made in the two subsequent Reports have been incorporated into the Bill by the Department.

We believe that the Bill, if enacted, will make significant progress in bringing order and simplification to the procedural and administrative provisions of the New York Tax Law ("Tax Law"). The Bill will eliminate a number of procedural traps and inequities for taxpayers and streamline the administration of the Tax Law by the Department. We believe that the Department is to be commended for both the well-conceived structure of the Bill and its general even-handedness. We enthusiastically support enactment of the Bill.

The Bill does not apply to New York City taxes, other than those administered by the Department (e.g., sales and use and personal income taxes). New York City has many local taxes closely modeled after similar New York State taxes. To avoid procedural traps for taxpayers and make New York a more attractive location in which to do business, the Committee strongly recommends that New York City's procedural rules be conformed with those provided by the Bill.

I. OVERVIEW

Unlike the Internal Revenue Code, the Tax Law does not currently contain any unified or even consistent procedural and administrative provisions. The various articles of the Tax Law were added at different times and each contains its own procedural and administrative rules. As a result, any uniformity in procedures is more a historical accident than an intentional objective. As was pointed out in the 1984 Report, the current rules are unnecessarily complex and confusing in a manner which serves no logical objective. In addition, the subtle differences

in procedural rules among the various articles have created procedural traps for taxpayers and administrative complexity for the Department.

The Bill substantially corrects most of these problems. The various procedural rules are reorganized into a new procedural article (Article 35) which would apply to most taxes. To the extent practical, the procedural provisions of the personal income and franchise taxes serve as the model for the uniform procedural rules. Generally, these rules are closely modeled after the procedural provisions of the Internal Revenue Code and they are thus familiar to taxpayers and practitioners. Moreover, the new organization of the procedural rules should facilitate uniform changes in these rules as new legislation is adopted in future years.

In addition, certain fundamentally unfair pro current law (e.g., the requirement that a taxpayer pay contested taxes or post a bond prior to seeking an Article review of a Tax Tribunal decision and the unusually short period of time to seek a refund of sales and use taxes) have been eliminated. These changes were recommended in the 1984 Report.

The Bill correctly recognizes that the major differences in the types of New York taxes make complete uniformity unrealistic. However, by collecting the various provisions into a single procedural article, the Bill will provide significant assistance to taxpayers and practitioners in complying with and protecting their rights under the Tax Law.

II. COMMENTS

A. General Scope of Bill

Article 35 will apply to most, but not all, New York taxes. It will not apply to the estate tax except for the additional taxes imposed by Sections 954-a and 958-a of the Tax Law (tax on certain premature dispositions of property by heirs). While the Committee continues to believe that the procedural rules for the estate tax should be similar to those of the other major New York taxes, such a change would require major structural changes to the underlying tax scheme and is not appropriate for inclusion in the Bill. While the Committee has not commented on the Department's recent study regarding restructuring the administration of the estate tax, the Committee continues to support the general recommendations previously made on this subject.*

Only those provisions of Article 35 that relate to conciliation conferences, division of tax appeals and judicial review will apply to the mortgage recording tax (Article 11), the stock transfer tax (Article 12), and the taxes in the Racing, Pari-Mutuel Waging and Breeding Law. This limitation on the scope of Article 35 may be proper in view of the unique nature of these taxes.

B. General Procedures

1. Notice of Deficiency and Assessment Procedure

Sections 1610 and 1611 of the Bill adopt a generally uniform rule for notices of deficiency and assessments

* See New York State Bar Association Tax Section Report, "Recommendation for Simplification of New York Estate Tax Exemptions and Procedures" (September 1967) at p. 38-39; New York State Bar Association Tax Section, "Report On Procedural Uniformity in the New York Tax Law" (July 1984) at p. 7-8.

based upon the similar provisions of the personal income and franchise taxes which are derived from the corresponding provisions of the Internal Revenue Code. This change was recommended in the 1984 Report.

(a) Elimination of Notice of Determination Provisions

For certain taxes, such as the sales and use and the real property transfer gains taxes, the "notice of determination" procedure is currently used. Other taxes use the "notice of deficiency" procedure which is similar to the federal system. Unlike the taxes for which the notice of deficiency procedure is used, there is no requirement that a tax subject to the notice of determination procedure be "assessed" before it is subject to collection action. As a result, the Department is not prohibited from attempting to collect disputed taxes while the matter is being contested in the Division of Tax Appeals. We understand that unless the jeopardy assessment provisions are applicable, the Department has an administrative policy not to collect taxes subject to the "notice of determination" procedure until proceedings in the Division of Tax Appeals have been completed. Article 35 would provide a uniform rule by applying the "notice of deficiency" procedure to all taxes governed by Article 35 thus giving taxpayers the statutory protection they currently enjoy only as a matter of administrative discretion. Absent a jeopardy assessment, the Bill would prohibit the Department from attempting to collect disputed taxes until the taxpayer's appeal rights in the Division of Tax Appeals have been exhausted. This change conforms the "practice" with the law and was recommended in the 1984 Report.

The change in procedure will also eliminate one taxpayer "benefit" under the current sales tax procedures for giving notice to a taxpayer. Under the current sales tax

procedures, a taxpayer must receive actual notice of a notice of determination.* Article 35 adopts the rule used in the current personal income and franchise tax provisions that a mailing by certified or registered mail to a taxpayer's last known address is sufficient. Although some members of the Committee believe that retaining the current "actual receipt" standard for sales tax is preferable, on balance, we support this change since it conforms with the existing federal procedural rules.

(b) Elimination of Differing Time Limits for Contesting Notices of Deficiency

The Bill eliminates the confusion under existing law whereby a taxpayer has different time periods for contesting a tax deficiency in the Division of Tax Appeals. Under current law, the time limits vary from 30 to 90 days for notices sent to U.S. addresses and 30 to 150 days for those sent to non-U.S. addresses. The Bill adopts a uniform rule of 90 days unless the notice of deficiency is sent to a non-U.S. address, in which case a uniform 150-day rule applies.

(c) Burden of Proof

The burden of proof rules currently contained in Section 689(e) (personal income tax) and Section 1089(e) (franchise tax) should be expressly incorporated into Article 35 and made applicable to all taxes to avoid the possible implication that their deletion indicates a change in such rules.

2. Interest

The Bill incorporates the interest provisions recently added by the 1989 Budget Bill. These new rules generally conform to the federal rules for determining interest on underpayments

* See Ruggerite v. State Tax Commissioner, 64 N.Y.2d 688 (1984).

and overpayments of tax as was recommended in the 1984 Report. However, unlike the federal rules, interest is paid on refund claims only from the time the refund claim is filed; and no interest is paid if the refund is paid within three months of filing of the claim or, if claim is based upon a federal change, if a timely notice of federal change, was not filed. As indicated in our prior comments on the 1989 Budget Bill, we believe this result is wrong. It is contrary to the economic concepts underlying the general interest provisions and inconsistent with the comparable federal rules. However, this is a criticism of the 1989 Budget Bill provision and not the manner such provision is incorporated into Article 35.

3. Limitation on Period for Assessment

(a) General Rules

The rules for the limitation on the periods for assessment contained in the franchise and personal income taxes are generally adopted in Section 1612 of the Bill. Special rules, which appear justified, apply for certain of the miscellaneous taxes.

(b) Six Year Statute of Limitations for Substantial Omission of Gross Income

Section 1612(d) and (e) of the Bill incorporates the provision from the current personal income and franchise tax law that if a taxpayer omits in excess of 25% of gross income from a return, the period for assessing a deficiency for such return is increased from 3 years to 6 years. This provision does not apply, however, to the extent the taxpayer discloses in the return or in a statement attached to the return, information sufficient to apprise the Department of the nature and amount of the item in issue. We recommend that these provisions explicitly

provide that adequate disclosure in a federal tax return which is filed with a state return is adequate disclosure.

(c) Report of Federal Changes

The Bill adopts the recommendations made in the 1988 Report to change the provisions of existing law with respect to the limitation period when a taxpayer is required to report federal income tax changes for purposes of the franchise and personal income taxes. Under current law, if a taxpayer files a report of the federal change, the Department may assess additional New York tax related solely to such change for a period of two years after the filing of the change report, regardless of the otherwise applicable limitation period. If a taxpayer fails to file the change report (even if the change would allow the taxpayer to seek a refund of tax), the assessment period for the taxpayer's entire liability for franchise or personal income taxes for the year in question never expires. See Tax Law §§ 683(c)(1)(C) and 1083(c)(1)(C). Thus, a taxpayer who inadvertently fails to file a report of a federal change may be surprised to discover that many years later, the Department may assess additional taxes unrelated to the federal changes. While it may be argued that the existing law encourages taxpayers to file reports of federal changes, most taxpayers (and practitioners) are unaware of the harsh result of this obscure and seemingly inappropriate rule.

The Bill would change existing law by allowing an assessment of additional tax at any time if a report of federal changes is not filed but only to the extent of any deficiency resulting from the federal change. The Department's adoption of this recommendation is a good example of its efforts to eliminate many inequitable provisions in existing law.

4. Limitation on Period for Refunds

Section 1615 of the Bill applies the current income and franchise tax limitation period for filing refund claims to most taxes. Generally a refund claim can be filed the later of three years from the filing of a return or two years from payment. The two-year period (from the later of the transfer date or the payment date) for the real estate transfer gains tax under existing law is retained and other exceptions are applicable for certain miscellaneous taxes. There is no justification for the retention of this arbitrarily short period for gains tax refund claims.

The major benefit from this change is to eliminate the trap for taxpayers seeking refunds of sales and use taxes. Under current law, a refund claim must be filed within three years of when the sales and use tax is payable. This means that a taxpayer who pays sales or use taxes more than three years after the due date of such taxes can never seek a refund of such taxes. This is a trap for an unsuspecting taxpayer who pays amounts claimed due in a notice of determination to stop the imposition of interest believing that he has two years in which to seek a refund. The change will eliminate a trap for the unwary under current law.

5. Mailing Rules

Section 1620 of the Bill adopts the mailing and other miscellaneous rules for timely complying with deadlines contained in the franchise and personal income taxes. While the Committee believes that these uniform rules are desirable, there will be problems if uniform regulations are not also adopted. Currently, regulations have been promulgated under the sales and use, personal income and motor fuel tax laws which provide rules for the timely filing of documents dated with a private postal meter.

No such regulations have been issued under the franchise tax. Thus, the use of a private postal meter can lead to a filing which is timely under one tax, but which would be untimely under another tax. Clearly, this inconsistency should be resolved when the Bill is adopted by uniform regulations for all taxes based upon the rule in the sales and use and personal income tax regulations which provide rules modeled after the federal rules for the use of private postal meters.

6. Judicial Review

Under current law, several taxes, including the sales and use and the real estate transfer gains taxes, require either the payment of such taxes or the filing of a bond as a condition of seeking judicial review of a decision of the Tax Tribunal. Section 1619 of the Bill generally adopts the judicial review rules currently contained in the personal income and franchise tax laws which allow an Article 78 proceeding without the prior payment of disputed taxes. This adds substantial fairness to the procedure for seeing judicial review. As under existing law, the Department may institute collection procedures after the Tax Tribunal's decision is final unless a bond or other security is provided so that this change should not adversely affect the collection of taxes. This change was recommended in the 1984 Report.

C. Civil Penalties and Additions to Tax

The Bill would bring about three fundamental changes to New York law with respect to civil tax penalties. If enacted, the Bill would (1) consolidate existing penalty provisions of various articles of the Tax Law into a single article; (2) amend existing penalty provisions to conform with changes in federal law brought about by the Tax Reform Act of 1986 and the Omnibus Budget

Reconciliation Act of 1989, and (3) increase certain penalties and add new penalties for delinquency, negligence and fraud.

Consolidation of penalties into a single article is an integral part of achieving procedural uniformity, which would make the Tax Law less complicated and confusing. However, the penalty system itself is complex and confusing and this complexity is not resolved merely by consolidation. Moreover, penalty provisions are more substantive than procedural in nature. They impose additional liabilities on taxpayers which, if applicable, are subject to the same assessment, protest and collection procedures as the underlying tax. Consequently, the goal of procedural uniformity can be accomplished without major revisions to existing penalty provisions.

The New York's civil tax penalty structure is modeled after federal law. In recent years, there have been a number of changes to the federal penalty structure. The changes made by the Tax Reform Act of 1986 include:

(1) increasing the penalty for failure to pay tax for any month following ten days after notice of intent to levy is filed or (in the case of a jeopardy assessment) for any month after the date notice and demand for payment of tax is made, from 0.5 to 1.0 percent;

(2) increasing the civil fraud penalty from 50 to 75 percent;

(3) increasing the penalty for substantial understatement of liability from 10 to 20 percent (the Omnibus Reconciliation Tax Act of 1986 had previously increased the penalty to 25 percent);

(4) amending the coordination between the negligence and fraud penalties so that each may apply to the same underpayment where

portions are attributable to fraud and
portions are attributable to negligence; and

(5) defining the term "negligence".

The Omnibus Budget Reconciliation Act of 1989 made
further changes to the federal penalty structure, including:

(1) increasing the negligence penalty from 5
to 20 percent;

(2) eliminating the interest based components
of the civil fraud and negligence penalties;

(3) coordinating the accuracy-related
penalties (e.g., negligence, substantial
understatement of pension liabilities) so that
all are imposed at a rate of 20 percent (40
percent in the case of certain gross valuation
misstatements);

(4) modifying the penalties for failure to
file correct information returns and to
furnish correct payee statements and providing
for a reduction in such penalties if filed or
furnished within certain time periods or by
small businesses;

(5) providing a tiered penalty structure for
failures to make timely tax deposits; and

(6) adopting a penalty of 15 percent per
month (up to 75 percent) for the fraudulent
failure to file a return.

The 1989 legislation made sweeping changes to the
federal penalty structure, reducing the overlap of penalties
applicable to a single act of misconduct, simplifying the penalty
provisions and making penalties more equitable. We strongly
endorse the Department's proposal to conform New York State's
penalty provisions to federal law.

The Bill incorporates corresponding amendments to New York's penalty provisions with certain modifications discussed below and adds a limited number of new penalties.

1. Failure to File/Failure to Pay Tax

The penalties for failure to file a return and failure to pay tax applicable to the personal income tax, corporate franchise taxes and the real property transfer gains tax are derived from Sections 685(a)(1) and 1085(a)(1) of the Tax Law.

Generally, the penalty for failure to file a return timely is 5 percent of the tax required to be shown on the return for each month or fraction of a month, with a maximum penalty of 25 percent. The penalty for failure to pay is generally 0.5 percent for each month or fraction of a month, with a maximum penalty of 25 percent.* Comparable to the federal provision, the Bill provides that the penalties for failure to pay tax, shall be increased from 0.5 to 1.0 percent for any month beginning after the earlier of the following dates:

(A) ten days after notice of tax lien is given, or

(B) the day notice and demand for payment of the tax is made in the case of a jeopardy assessment.

This provision is derived from a corresponding federal provision enacted as part of the Tax Reform Act of 1986, but is modified in the following respects. Under the federal provision, the increased penalty is not imposed until ten days after notice of intent to levy has been issued except in the case of a

* The failure to pay penalty for withholding sales, motor or diesel fuel and cigarette or tobacco products taxes is 2% per month for the first two months, and 1% thereafter, not exceeding 30%. It is difficult to discern a reason for the different penalties for these taxes.

jeopardy assessment. Insofar as New York's tax lien also serves as an execution on the property of the taxpayer, New York does not provide for issuance of a notice of intent to levy. Accordingly, the Bill provides for imposition of the increased penalty ten days after issuance of a notice of tax lien. The Bill also provides for imposition of the increased penalty upon issuance of a notice and demand for payment of tax, if it occurs before (or within ten days after) the issuance of a notice of tax lien.

The Bill also adds an additional penalty for fraudulent failure to file a return. The penalty, equal to 15 percent per month with a maximum penalty of 75 percent, is identical to a corresponding federal provision added by the Omnibus Budget Reconciliation Act of 1989.

Section 1662 of the Proposed Article 35 should be re-labeled to delete the term "non-willful" since that Section describes certain willful penalties, i.e. fraud.

These changes to conform with the Federal penalty structure should help to eliminate procedural complexity which we fully support.

2. Accuracy-Related and Civil Fraud Penalties

The proposed accuracy-related and civil fraud penalties are derived from the federal penalty structure, as recently modified by the Omnibus Budget Reconciliation Act of 1989.

First, the Bill increases the civil fraud penalty from 50 to 75 percent. This change conforms with the federal civil fraud penalty. Tax fraud should be severely sanctioned.

Increasing the penalty to 75 percent appears warranted and we support this change.

Second, coordination between the civil fraud and accuracy-related penalties would be modified. Under present law, the civil fraud penalty applies to the entire underpayment of tax if any portion of the underpayment is due to fraud. The interest component of the fraud penalty applies only to the portion of the underpayment attributable to fraud. Similar rules apply to the negligence penalty. The civil fraud penalty may be imposed only in lieu of the negligence penalty.

Under the Bill, the negligence penalty or accuracy-related penalty may be imposed only on the portion of the underpayment due to negligence or applicable substantial understatement or overstatement. The civil fraud penalty may be imposed only on the portion of the underpayment due to fraud. If portions of the underpayment are attributable to fraud and negligence, both penalties apply to the applicable portion of the underpayment. In addition, the Bill eliminates the interest component of the fraud and negligence penalties.

The Bill increases the negligence penalty from 5 to 20 percent and applies the same penalty rate to the following accuracy-related penalties: substantial understatements of tax, substantial valuation overstatements under income or corporate taxes, substantial overstatements of pension liabilities, and substantial gift tax valuation understatements. Like the corresponding federal provision, the Bill increases the penalty to 40 percent for certain gross valuation misstatements.

The Bill also includes the definition of "negligence" and "intentional disregard" for purposes of applying the negligence penalty.

The proposed coordination amendments go far to eliminate the complexity of the civil penalty structure and represents a substantial improvement over present law.

3. Information Returns

The Bill also includes penalties for failure to file correct information returns and to furnish correct payee statements. These penalties are modeled after the federal provisions which were amended by the Omnibus Budget Reconciliation Act of 1989. However, the Bill's provision would be applicable only to information returns and payee statements regarding wages. The Bill adopts the federal provisions which include reduced penalties if returns or statements are filed or furnished after the due date but before August 1st, for de minimis failures and for small business filers and for increased penalties where failure is due to intentional disregard. Under the Bill, the limitations on the maximum penalty which may be imposed are 25 percent of the federal limitations to reflect the ratio of the New York State personal income tax rates to the federal income tax rates.

4. Withholding Tax Returns; Sales Tax Returns; Deposits

The Bill increases the penalty for failure to pay withholding tax to 2 percent for the first 2 months and 1 percent for each month or fraction of a month thereafter, with a maximum penalty of 30 percent. Currently, the penalty rate is 5 percent per month with a maximum penalty of 25 percent. The Bill adopts

these same penalty rates for failures to file sales tax returns and pay or pay over sales tax. Currently, the penalty for failure to file a sales tax return or pay over sales tax is generally 10 percent for the first month and one percent for each additional month or fraction of a month thereafter, with a maximum penalty of 30 percent. The Bill includes a 15 percent per month penalty (with a maximum penalty of 75 percent) for fraudulent failures to file withholding tax returns.

The Bill also adopts the federal penalty applicable to failures to make timely tax deposits, and extends the penalty to failure to make timely deposits of sales tax. The penalty increases from 2 percent for failures of 5 days or less to 10 percent for failures of 15 days or more, however, if the tax is not deposited by the earlier of ten days after the date of the first delinquency notice or the date of notice and demand of a jeopardy assessment, the rate is 15 percent.

Although this provision generally conforms to Section 6656 of the Internal Revenue Code, it adds a definition of "person" which corresponds with the definition used for purposes of assessing the 100% penalty. The word "person" in Section 6656 has referred to the person required to make the deposit (i.e., the employer). It has not been interpreted as imposing personal liability on responsible officers or employees of a corporate employer. Therefore, in the interest of conformity, proposed Section 1656 should not apply to responsible officers and the definition of "person" in Section 1656(b)(3) should be deleted in its entirety.

A similar provision appears in Section 1679 with respect to tax payers required to make deposits of sales tax. Insofar as a responsible officer of a vendor is considered a "person

required to collect tax" for sales tax purposes, such persons are liable for sales tax penalties assessed against the vendor. Accordingly, the definition of person appearing in Section 1679(b)(3) is appropriate and should be retained.

D. Collection Provisions

The current collection provisions of the taxes subject to Article 35 are consolidated in Part IV of Article 35. The provisions are generally based upon the collection provisions in the personal income tax law. Section 1706 of the Bill requires the giving of ten days notice of lien before the enforcement of any collection activity. We recommend that this be conformed to the 30 day period under the federal tax levy rules. See I.R.C. § 6331(d). Several new provisions are added which are based upon federal collection provisions.

Section 1709 of the Bill would supercede the provisions of Sections 5205(d)(1) and 5205(d)(2) of the CPLR which currently exempt 90% of a debtor's personal service income (including retirement and certain trust payments) from income execution. The proposed statute would establish a new exemption equal to \$120 per week plus \$25 for each dependent. This change generally conforms to the federal rules.

Indiscriminate application of the ability to garnish a substantial portion of the wages or retirement income of individuals could be an unduly oppressive means of collecting unpaid tax. For this reason, we urge the Department to follow the federal example and use its garnishment power only to force the taxpayer to accept reasonable payment terms.

The Bill also has changes in the rules for filing of state tax liens. For example, New York tax liens would be filed in a manner similar to federal tax liens.

E. Effective Date

The Bill would be generally effective for returns or reports required to be filed on or after January 1, 1992. We see no reason why, if the bill is enacted this year, it should not apply, at the latest to returns required to be filed after January 1, 1991. Since these returns will be audited some time after that date, the Department should have ample time to adopt to these new procedures.

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