

May 17, 2000

Hon. Sheldon Silver
Speaker
New York State Assembly
Room 932, Legislative Office Building
Albany, NY 12248

Hon. Joseph L. Bruno
Majority Leader
New York State Senate
Room 909, Legislative Office Building
Albany, NY 12247

Hon. Herman D. Farrell, Jr.
Chair, Ways & Means Committee
New York State Assembly
Room 923, Legislative Office Building
Albany, NY 12248

Hon. Ronald B. Stafford
Chair, Finance Committee
New York State Senate
Room 502, Capitol Building
Albany, NY 12247

Hon. Roy M. Goodman
Chair, Investigations, Taxation
& Government Operations Committee
New York State Senate
Room 913, Legislative Office Building
Albany, NY 12247

Re: Assembly Bill 8518-A
Senate Bill 5671-A

Gentlemen:

We write to express our support for the above-numbered bill, which passed the Senate in its original form last year, and we are advised is being offered by New York City's Legislative Representative for reintroduction in the current session in amended form. The substantive amendments to the bill relate to the provisions in sections 22 and 23 (formerly section 22) affecting offers in compromise.

Most of the bill's provisions consist of modernizing amendments to the New York City Charter and Administrative Code bearing on various unrelated tax matters, and reflecting the recommendations of a Tax Reform Task Force which included members of the Tax Section. A few of the provisions also include amendments to the Real Property Tax Law or the Tax Law. We summarize the provisions of the amended bill below, including extended explanation only where we believe it is needed. (Section references are to the bill after incorporation of the proposed amendments thereto.)

1. Sections 1 - 21 would amend the Real Property Tax Law and the Administrative Code to permit tax filings with the City Department of Finance or Tax Appeals Tribunal by use of private delivery services, conforming to Federal and State practice.
2. Sections 25 - 40 would amend the Administrative Code to permit the City Commissioner of Finance to vacate tax warrants and (where not already provided as to particular taxes) to release tax liens. The changes would facilitate the vacating of warrants issued in error by eliminating the need for a court order. Section 24 would amend the Tax Law to grant similar power to vacate warrants to the State Commissioner of Taxation and Finance, complementing the authority he already has to release liens.
3. Sections 41 - 44 would amend the Administrative Code to define the term partnership to include any entity treated as a partnership for Federal purposes, and thus subject to unincorporated business tax.
4. Sections 45 - 48 would amend the Administrative Code to confirm the City's existing practice by treating qualified subchapter S subsidiaries as separate corporations taxable under the general corporation tax or the banking corporation tax as if no Qsub election had been made. Section 47 would also update the banking corporation tax by providing that banking corporations which elect Federal S Corporation status (as they may do under a 1996 amendment to the Internal Revenue Code) will be taxed as if no S election had been made, thus conforming to the general corporation tax treatment.
5. Sections 49 - 51 would amend the Administrative Code to conform the allocation of advertising receipts of broadcasters and publishers under the general corporation tax to the revised rules enacted in

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1996 for the unincorporated business tax (point of delivery for publishers and location of listeners or viewers for broadcasters) and to change the rules under both taxes for publishers and broadcasters (by airwave or cable) to source retail subscription receipts as directly derived from the address of the subscriber rather than in proportion to the number of subscribers in each location.

6. Sections 22 and 23 would amend the Tax Law and the Administrative Code to expand the power of the State Commissioner of Taxation and Finance with respect to offers in compromise, and to grant to the City Commissioner of Finance power with respect to offers in compromise identical to those of the State Commissioner as amended by the bill.

Section 22 increases the threshold for requiring judicial approval of offers in compromise considered under subdivision Fifteenth of Section 171 of the Tax Law. Present law requires judicial approval for any offer that compromises a tax liability (inclusive of interest and penalties) of more than \$25,000. The proposed amendment would increase that threshold to require judicial approval only for offers where the tax liability sought to be compromised (not inclusive of interest and penalties) is in excess of \$100,000.

We favor this change. Under present law, collection of New York State taxes can extend over a period as long as twenty years if a tax warrant is filed. This is twice the federal tax collection period of ten years. The significantly longer collection period in New York State increases the potential for large uncollectible tax liabilities. Even a small unpaid liability will grow significantly over a twenty year period by accrual of interest and penalties. Accordingly, a disproportionately large number of tax debts will fall within the category of offers requiring judicial approval under the present relatively low threshold of \$25,000 . which has not been changed since enactment of the offer in compromise statute in 1986.

It is our understanding that a majority of the offers now being processed by the Department of Taxation and Finance require the step of judicial approval. Under the present offer in compromise regulations and pursuant to present administrative practice, the processing of any offer recommended for

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acceptance must undergo at least three levels of internal review, including the Head of Tax Compliance, the Office of the Commissioner and the Office of Counsel. We believe that adding the requirement of judicial review for most offers, regardless of how small the underlying tax liability, (1) impedes effective administration of the offer in compromise program, (2) adds unnecessarily to the time required to process an offer and (3) unduly burdens the court system.

Section 23 of the bill would add to the Administrative Code provisions relating to offers in compromise identical in substance to those now in subdivisions Fifteenth and Eighteenth-a of Section 171 of the Tax Law, as amended by Section 22 of the bill. This change would give the City Commissioner of Finance the same authority to settle and adjust tax claims as would be possessed by the State Commissioner of Taxation and Finance, including power the City does not now have over settlements based on doubt as to collectibility. The combined effect of the amendments will permit greater efficiency in dealing with uncollectible liabilities of taxpayers who are delinquent in obligations to both the State and the City.

Accordingly, we support the proposed amendments to the State and City offer in compromise statutes. These statutory changes represent a step in the right direction to making the State and City offer programs a better and more effective procedure for resolving tax liabilities not likely to be collectible in full. We expect to present recommendations for further statutory changes to improve the effectiveness of the offer in compromise program later this year.

We therefore urge the prompt introduction and enactment of the amended bill.

This letter was principally drafted by Robert J. Levinsohn, co-chair of our Committee on New York City Taxes, and Sherry S. Kraus, a Member-at-Large of our Executive Committee. If you have any questions about the letter, please call either Mr. Levinsohn at 212-969-3810, Ms. Kraus at 716-262-3360, or the undersigned.

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Very truly yours,

Robert H. Scarborough

<p>cc: Hon. James McGuire Counsel to the Governor Room 210, Capitol Building Albany, NY 12224</p> <p>Hon. Martin Connor Minority Leader New York State Senate Room 907, Legislative Office Building Albany, NY 12247</p> <p>Hon. John J. Faso Minority Leader New York State Assembly Room 933, Legislative Office Building Albany, NY 12248</p> <p>Hon. William T. Stachowski Ranking Minority Member, Finance Committee New York State Senate Room 918, Legislative Office Building</p>	<p>Hon. Andrew S. Eristoff Commissioner New York City Department of Finance Room 500, Municipal Building New York, NY 10007</p> <p>Hon. Israel Schupper Associate Commissioner for Tax Policy New York City Department of Finance Room 506, Municipal Building New York, NY 10007</p> <p>Hon. Devora Cohn Assistant Commissioner for Legal Affairs Department of Finance 345 Adams Street, 3rd Floor Brooklyn, NY 11201</p> <p>Ellen E. Hoffman, Esq. Director, Tax Law Division Department of Finance</p>
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<p>Albany, NY 12247</p> <p>Hon. John J. Flanagan Ranking Minority Member, Ways and Means Committee New York State Assembly Room 444, Capitol Building New York, NY 12248</p>	<p>345 Adams Street, 3rd Floor Brooklyn, NY 11201</p>
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