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December 19, 2011

The Honorable Thomas H. Mattox  
Commissioner of Taxation and Finance  
Department of Taxation and Finance  
W. A. Harriman Campus, Building 9  
Albany, New York 12227

Re: Report on Draft Regulations for New York State Offers in Compromise

Dear Commissioner Mattox:

I am pleased to submit for your consideration the enclosed report commenting on the draft amendments to the Offer in Compromise regulations under Part 5005 of Chapter VIII of 20 NYCRR to implement recent changes in the Commissioner's authority to compromise taxes under Section 171 (fifteenth) of the New York Tax Law. The principal author of this report is Sherry S. Kraus.

The Tax Section has long supported statutory and regulatory changes that would make the New York State Offer in Compromise program more effective. Since the federal and state Offer in Compromise programs have the same basic goal of collecting "what is potentially collectible at the earliest possible time and at the least cost to the government", we have urged that the federal Offer program be utilized as a model for the New York Offer program. The federal program has been in place for many years and is generally viewed as working well.

The recent changes to the New York State Offer in Compromise statute, which became effective on August 17, 2011, were intended to address long-standing concerns that the overly restrictive language in the New York Offer in Compromise law (1) has prevented the program from providing adequate relief to debtors in resolving overwhelming tax liabilities, (2) has contributed to the failure of the New York Offer in Compromise program to reach its public policy goals and (3) has deprived the State of revenue from the compromise of tax liabilities that are not likely to be collectible in full. The amendments to the enabling statute will

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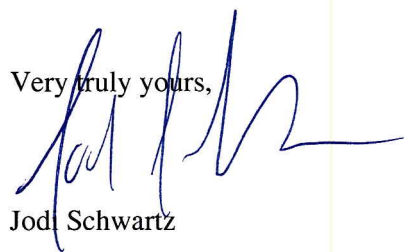
allow the Department to modify the New York Offer in Compromise program to address those concerns and to be more similar to the federal Offer in Compromise program.

The draft changes in the Offer in Compromise regulations that we reviewed are intended to implement the changes to the statute. The regulations have, for over a decade, constituted the primary source of information to taxpayers and to the Department on the Offer in Compromise program. Accordingly, in order for the Department to administer a uniform and fair Offer in Compromise program, it is important that the amended regulations provide as much detailed guidance as possible to taxpayers and practitioners as well as to the Department. We commend the Department for supporting these changes to the law and for the quality and content of the draft regulations.

This report makes suggestions for additional changes to the regulations that we believe will clarify the definitions of “undue economic hardship” and “reasonable collection potential”. We have also suggested changes to the regulations to clarify and conform the Department’s policy toward defaulted offers and the use of collateral agreements to the federal Offer in Compromise program. We believe that these changes will be helpful both to taxpayers and the Department in the Offer in Compromise program.

If we can be of further assistance to you in the drafting of these important regulations, please let us know.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jodi Schwartz", is written over the typed name.

Jodi Schwartz

cc:

Jamie Woodward  
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Department of Taxation and Finance

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