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October 10, 2006

The Honorable Andrew S. Eristoff
Commissioner
NYS Department of Taxation and Finance
State Campus, Building 9
Albany, NY 12227

Re: **New York Innocent Spouse Relief**

Dear Commissioner Eristoff:

Section 654 was added to the New York State Tax Law in 1999 to expand relief to "innocent spouses" for income and self-employment tax liabilities arising from the filing of a New York State joint income tax return.[1] The law conforms New York State innocent spouse relief to the federal innocent spouse relief under Internal Revenue Code Section 6015.[2] In addition, Section 654(c) provides that if an individual is relieved of a federal income tax liability pursuant to Code Section 6015(b), then there shall be a rebuttable presumption that the individual is entitled to equivalent relief from liability under the New York law. This presumption acknowledges the conformity between the federal and New York State innocent spouse statutes and relieves taxpayers of the onerous process of proving entitlement to relief under New York State law if relief has been granted at the federal level.

This report provides suggestions and comments on certain aspects of the administrative procedures now in place for reviewing a claim for innocent spouse relief under New York law. Included in the text of the

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[1] This report was drafted by Sherry S. Kraus and Janet B. Korins, Co-Chairs of the Tax Section's Committee on Individuals. Helpful comments were received from Kimberly Blanchard, Michael Schler, David Miller, Maria Jones, Sharon Gerstman and Gary Bluestein.

[2] References in this report to Code Sections refer to the Internal Revenue Code of 1986, as amended.

report as well as a separate Appendix are suggestions for modifying Form IT-285, on which the claim for New York State innocent spouse relief is made. We have concerns that the present form is burdensome and may, in some instances, elicit information that is not only unnecessary for review of the claim, but also may influence the substantive review process in a manner that is contrary to law. For example, it does not appear that Form IT-285 adequately reflects the rebuttable presumption under Section 654(c) that is available to taxpayers who have already obtained federal innocent spouse relief under Code Section 6015(b). Administrative review of a claim that does not take into account the benefit to the claimant of the presumption is contrary to the statute and needlessly requires both the claimant and the New York State Department of Taxation and Finance (hereafter "the Department") to invest time and resources on a claim that has already been found supportable by the Internal Revenue Service (hereafter "IRS").

As you may recall, we discussed some of our comments at a meeting with you and your staff in the fall of 2005. We are pleased that you expressed interest in a report on this subject. The innocent spouse rules affect individuals who often have only limited financial resources. These individuals also may lack complete tax information for the years at issue. It is critically important for these taxpayers to have clear, simple guidance about the rules and to minimize, to the extent possible, the documentation required to obtain innocent spouse relief. Otherwise, many qualifying taxpayers may not be able to obtain the relief contemplated by the statute.

As described in more detail below, we have a number of suggestions for improving, clarifying and streamlining the procedures for taxpayers requesting New York State innocent spouse relief.

I. Background and Description of Statute.

Prior to the enactment of Section 654 of the New York State Tax Law, New York had its own "innocent spouse" statute that provided relief to a joint return filer who would otherwise be liable for income and self-employment taxes attributable to the other spouse. With a few exceptions of short duration, the New York "innocent spouse" statute followed, almost verbatim, its federal counterpart—former Section 6013(e) of the Internal Revenue Code.

Federal innocent spouse relief under former Code Section 6013(e) was long regarded as too narrow in application and very difficult to obtain. There were numerous requirements, many of which were highly subjective, to qualify for relief. For example, the "requesting spouse" had to show (i) that the spouse had not "benefited" from the items omitted from gross income and (ii) that it was "inequitable" to hold the spouse liable for the tax deficiency. In addition, the requesting spouse had to demonstrate that he/she did not know, or have reason to know, of the understatement. A further limitation on the relief that could be granted under Code Section 6013(e) was that it applied only to taxes arising by reason of a deficiency assessment to the jointly filed tax return and did not apply to any unpaid taxes still

owed on the originally filed joint return (*i.e.*, self-assessments). A notable feature of Code Section 6013(e) was that there was no requirement that the spouses be divorced, separated or living apart in order to qualify for relief.

The IRS Restructuring and Reform Act of 1998 repealed Code Section 6013(e) and enacted in its stead Code Section 6015, which was intended to address these concerns and to expand the grounds on which "innocent spouse" relief could be granted. The basic features of former Code Section 6013(e) [as described above] were carried over and incorporated into the new law as Code Section 6015(b) – the first of three grounds for innocent spouse relief. Two additional grounds for relief were added (1) to introduce a more objective and straightforward set of criteria to qualify for relief and (2) to broaden the circumstances and types of liabilities for which relief could be granted, including relief for self assessed taxes on an originally filed tax return:

- **Separation of liability election.** Under Code Section 6015(c), relief can be based on a "separation of liability election". For taxpayers who are divorced, separated or living apart for more than twelve months, an electing taxpayer can limit his/her liability for any joint return deficiency assessment to the portion of the tax deficiency arising from item(s) on the joint return which would have been allocable to that taxpayer had a separate return been filed. Once the taxpayer shows eligibility based upon being divorced, separated or living apart for more than twelve months, the taxpayer is entitled to separate his/her liability under Code Section 6015(c) unless the IRS is able to demonstrate that the taxpayer had "actual knowledge" of the error on the return which gave rise to the deficiency. (This is a narrower standard than the "knew or should have known" requirement under Code Section 6015(c) and, unlike the Code Section 6015(b) requirement, the burden of proof regarding actual knowledge is on the IRS.) Other than the issue of whether the requesting spouse had "actual knowledge" of the error on the return which gave rise to the deficiency, the elements to support this ground for relief are relatively straightforward and objective. Just as for relief granted under Code Section 6015(b), this provision applies only to liabilities owed by reason of a deficiency assessment and does not apply to any liabilities owed as a result of unpaid taxes on an originally filed tax return. In contrast to "innocent spouse" relief under Code Section 6015(b), the "separation of liability election" is not available to taxpayers who remain married and living together.

- **Equitable relief.** Under Code Section 6015(f), the IRS has the authority to relieve the taxpayer from joint return liabilities attributable to the other spouse if it is inequitable to hold the taxpayer liable for the tax or any deficiency in tax. For this relief to be available, the taxpayer must demonstrate that relief is not available under either Code Section 6015(b) (traditional innocent spouse relief) or Code Section 6015(c) ("separation of liability election"). While equitable relief is difficult to obtain and the factors are highly subjective, this is the only ground that provides relief for unpaid taxes owed on an originally filed return as opposed to taxes owed as a result of a deficiency assessment. Under IRS guidelines published in Revenue Procedure 2005-15, factors to be considered for equitable relief

include marital status (relief will generally not be granted if the spouses are not yet divorced or separated or they are still living together), economic hardship, whether the requesting spouse received significant benefit from the unpaid tax liability and whether the requesting spouse has demonstrated a good faith effort to comply with income tax laws in the years following the year to which the relief request relates.

Section 654 was enacted in the aftermath of these federal changes to conform New York State "innocent spouse" law to federal law, thereby incorporating the expanded forms of relief included in the IRS Restructuring and Reform Act of 1998. Section 654(a) incorporates into New York law the three forms of federal innocent spouse relief under Code Section 6015 – traditional innocent spouse relief, the separation of liability election, and equitable relief.

In addition, Section 654(c) states that if an individual is relieved of a federal income tax liability pursuant to Code Section 6015(b) (*i.e.,* traditional innocent spouse relief), then "there shall be a rebuttable presumption that such individual shall also be entitled to equivalent relief from liability under this section, to the extent that such individual has an understatement of tax under this article for the same taxable year that is attributable to the same erroneous item or items to which the individual's federal income tax liability was attributable." This provision furthers the intended conformity between the federal and New York innocent spouse provisions and relieves taxpayers of the burden of proving entitlement to relief for a second time. Since the federal and state statutes are now essentially identical and the federal review process is rigorous and time consuming (typically taking in excess of a year), the New York statute sensibly spares both the taxpayer and the Department the burden of duplicating this review where federal relief has been granted.

II. Form IT-285

Following the enactment of Section 654, the Department issued Publication 89, "Innocent Spouse Relief (and Separation of Liability and Equitable Relief)," which provides taxpayers with a straightforward explanation of the various types of relief available for spouses who have a New York State joint return liability attributable to the other spouse. The Department released Form IT-285 to process claims for innocent spouse relief.

Consistent with Section 654(c), Publication 89 informs taxpayers that if innocent spouse relief has been granted by the IRS for an understatement of federal tax due to erroneous items of a spouse (or former spouse) for the same taxable year that is attributable to the same erroneous items for which the taxpayer seeks innocent spouse relief from a New York state tax liability, the taxpayer will generally qualify for innocent spouse relief for those items for New York State tax purposes. Those taxpayers are instructed to attach to Form IT-285 documentation showing that innocent spouse relief was granted for federal purposes.

Notwithstanding the language of Section 654(c) and Publication 89, the present Form IT-285 and instructions do not indicate to taxpayers the existence of this rebuttable presumption or the significance of having obtained federal innocent spouse relief. Part I of Form IT-285 solicits general background information from the claimant. Line 5 of Part I asks the claimant whether relief from a joint federal tax liability has been granted by the IRS for the same tax year (requesting documentation). Line 6 of Part I establishes whether the matter involves a New York State deficiency adjustment. Part II of Form IT-285 is entitled "Innocent spouse relief" and relates to requests for traditional innocent spouse relief as well as to the remainder of the Form. Lines 7 and 8 of Part II ask whether the understatement of tax is attributable to the other (non-requesting) spouse and whether the requesting spouse knew or had reason to know of the understatement. The related instructions ask for supporting information. Accordingly, so long as the New York State adjustments relate to the same erroneous items as those found on the federal return, the reviewer should have enough information by the end of Part II to know whether the taxpayer's claim for relief should be reviewed under the rebuttable presumption rules of Section 654(c). If so, the taxpayer should be routed into a streamlined review process as contemplated by the statute.

Instead, Form IT-285 directs the taxpayer to proceed at the conclusion of Part II to Parts III (dealing with separation of liability requests), IV (equitable relief) and V (containing a spreadsheet and requesting allocation of certain items between spouses as described below). This instruction is written as a requirement rather than an option available if the taxpayer is seeking alternative theories of relief. The Part III questions determine whether the taxpayer is divorced, separated or living apart from the non-requesting spouse. This is an important inquiry in requests for relief under the New York counterpart to Code Section 6015(c) ("the separation of liability election") because such relief is not available to spouses who remain married or living together. Similarly, this inquiry would be relevant to claims for equitable relief under Code Section 6015(f) where marital status is a factor taken into account. *See* Rev. Proc. 2005-15. However, in claims for relief under Code Section 6015(b), there is no requirement that the requesting spouse be divorced, separated or living apart from the non-requesting spouse. If the requesting spouse is divorced or separated from the non-requesting spouse, this is one of many factors, including abandonment, that the requesting spouse may bring forward affirmatively in the claim to support that it is "inequitable" to hold him/her liable for the understatement in tax. Treas. Reg. §1.6015-2(d).

Perhaps the most burdensome aspect of Form IT-285 is Part V, which requires that the taxpayer provide a detailed allocation of income and deductions from the original tax return. The Part V instructions direct the taxpayer to attach copies of all federal W-2 forms and other documentation and to allocate income and adjustments between the spouses as if separate returns were filed. This is a particularly onerous requirement in many innocent spouse claims since typically the requesting spouse did not prepare the tax return and may not have access to any of the tax records.

The Part V allocations are needed to process a claim only if the claim is submitted under the New York counterpart to Code Section 6015(f) for equitable relief and the relief sought is for unpaid taxes on an originally filed return, as opposed to relief from a deficiency assessment.[3] In such a case, a taxpayer making a claim for equitable relief must demonstrate that withholding taxes or other prepayment of taxes on the taxpayer's account would have covered that taxpayer's taxes had a separate return been filed. However, this is the only situation under Code Section 6015 where the allocation contemplated in Part V would be relevant to the determination.

The Part V allocations have no relevance to any other claim for innocent spouse relief. Relief under Code Section 6015 (b) (traditional innocent spouse relief), Code Section 6015(c) (separate liability election) or even equitable relief under Code Section 6015(f) - if concerning a tax deficiency as opposed to an underpayment - is item based. That is, each item of unreported income or disallowed deduction is examined to determine if it is allocable to the taxpayer seeking relief, or, if not, whether that taxpayer has shown the requisite factors in order to be entitled to relief. A recomputation of the tax return as if the spouses had filed separate returns, as now required in Part V, is never needed in these cases. Instead, for these claims, it should be necessary only for the requesting spouse to provide a description of each item on the return which gave rise to the deficiency, and whether the item is allocable to the requesting spouse or to the non-requesting spouse.

The present Form IT-285 approach of requiring every applicant for innocent spouse relief to fill out Part V of Form IT-285 as a condition to processing the claim is not only unwarranted and unnecessary under the statute, but also makes the application process extremely burdensome and sometimes impossible since, in many cases, the requesting spouse lacks the information required. If a requesting spouse cannot comply with the Part V requirement of reconstructing the original tax return as to all items (including those that did not give rise to the deficiency) on a separate return basis, the taxpayer will likely not even submit the claim in anticipation that the Department will not process the application for review. This results in the failure of the Department to review and/or grant many otherwise valid claims for relief.

We suggest that Form IT-285 be revised to eliminate the Part V requirement for any claim made regarding a deficiency assessment. Only if the claim is for equitable relief and concerns an underpayment of tax shown on an originally filed return should the taxpayer be required to make an allocation of all items of income and deduction on the tax return at issue as presently required under Part V.

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[3] To be eligible for "equitable relief" under Code Section 6015(f), relief must not be available under either Section 6015(b) or Section 6015(c). Since (f) is the only provision where relief can be requested for unpaid taxes on an originally filed tax return, all such claims are made under (f). However, if the taxpayer's claim for relief from a deficiency assessment is found not to be eligible under (b) or (c), a claim can be made under (f).

Furthermore, if the claim is one for traditional innocent spouse relief under Code Section 6015(b), Form IT-285 should be revised to determine early on whether the claimant should be given the benefit of the presumption of Code Section 654(c). If it is determined from the Form IT-285 that federal innocent spouse relief has been granted for the same tax year and erroneous return item,[4] the taxpayer should not be required to fill out either Part III or Part V and should be routed instead into a streamlined review process that will result in grant of the relief requested unless the Department has grounds for rebuttal. The Part III inquiry on marital status should not be relevant in granting relief since Code Section 6015(b) does not require that the requesting spouse be divorced or separated from the non-requesting spouse. Furthermore, if the marital status of the requesting spouse has been brought forward by the requesting spouse in the federal claim to support the Code Section 6015(b) requirement that it is "inequitable" to hold the requesting spouse liable for the understatement, such will have already been reviewed at the federal level and should not be reviewed again by the Department.

We believe that, in order to give appropriate effect to the rebuttable presumption and the legislative intent to piggyback the federal determination, the documents required to support New York State innocent spouse relief should be minimal once in a streamlined review. We considered what documentation should be required to accompany the Form IT-285. The answer to that question depends on what facts would be relevant (1) to verify that federal relief had indeed been granted under Code Section 6015(b), (2) to verify that the federal relief was for the same erroneous item and tax year that gave rise to the New York State tax deficiency and (3) to determine whether there is any basis for rebuttal of the presumption that relief should be granted. As to documentation, the taxpayer should be required to attach a copy of the IRS determination letter granting relief (which typically will state the statutory ground upon which relief has been granted, *i.e.*, whether under Code Section 6015(b)). Other supporting documentation submitted by the taxpayer in the federal claim (*e.g.*, Form 8857 application) may be needed in the review to confirm that the New York State tax deficiency relates to the same erroneous item and same tax year for which federal relief was granted.

Once this documentation has been submitted and the state reviewer has confirmed that the New York State tax deficiency relates to the same item of adjustment as the federal, the only additional inquiry to be made in a streamlined review should be whether there is any basis for rebutting the presumption. We can think of only one situation that the Department might encounter on a routine basis. This would arise where there is a significant lapse of time between the filing of the federal return and the state return. For example, if the state return had been filed much later than the federal return, the requesting spouse may have had an opportunity, in the interim, to learn of the error on the federal return -- either by reason of an IRS audit or forced collection action against the home or a joint asset such as a bank account. If that were

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[4] Line 5 of Part I of Form IT-285 should be reworded to inquire of the applicant whether the New York adjustments for which relief is being sought relate to the same erroneous items as were on the federal return.

the case, and the requesting spouse nonetheless had agreed subsequently to file a New York State joint return that contained the same error that gave rise to the federal adjustment, then, contrary to when the federal return was filed, the spouse might "know or have reason to know" that there was an understatement on the state return. In such a case, the Department would have a basis not only for rebutting the presumption for relief, but also for denying relief.

On the other hand, we are mindful of the fact that many individuals do not file their state income tax returns contemporaneously with their federal tax return. The state income tax return will often be filed a few days or even months later than the federal return. We do not think the legislature intended for the rebuttable presumption to be applied only in the limited circumstances where the federal and state returns are filed contemporaneously. This construction would be so narrow in application as to make the statute meaningless. Furthermore, any such condition could have been easily expressly stated in the statute and was not. If a contemporaneous filing were required, then many typical taxpayers would be required to engage in a second, duplicative and time consuming process of proving to the state that they did not know or have reason to know of the understatement on the state return during the interim period, which could substantially undermine the effectiveness of the rebuttable presumption for the typical taxpayer.

However, if the state has information that there was a significant lapse of time between the filing of the federal tax return and the state tax return, we believe it is reasonable for the state to pursue an inquiry, even in the streamlined review process, as to whether the taxpayer "knew or had reason to know" of the understatement at the time of the filing of the state tax return even though the claimant had successfully established lack of knowledge (or reason to know) in the federal innocent spouse claim for the filing of the federal return. As to what constitutes a "significant lapse of time" that would warrant such an inquiry, we are aware that any time limit chosen will be somewhat arbitrary. However, we believe that it would be reasonable for the Department to pursue such an inquiry in cases where the Department has information that the New York tax return was filed more than a year after the federal return.

We make this recommendation with a cautionary note because we believe that, in most cases, the mere passage of time, for even as long as a year, between the filing of the federal return and the filing of the state return will not necessarily mean that the requesting spouse was on notice of a problem on the federal tax return. The most likely scenario for a spouse to become aware of a problem on the jointly filed federal tax return is by reason of an IRS audit or forced collection action. These actions often do not occur until several years after the filing of the federal tax return. Also, it is not uncommon in these cases for the non-requesting spouse to hide the fact of an IRS audit or forced collection action from the requesting spouse. Therefore, even if an IRS audit or collection had occurred after the filing of the federal return, but prior to the filing of the state return, such may not be determinative on the question of whether the requesting spouse "knew or had reason to know" of the error on the state return.

It is also not uncommon in these cases for the requesting spouse not to know very much about the tax returns filed, including when the federal or state tax returns were filed. Accordingly, while we believe this is a legitimate line of inquiry not only in the streamlined review process, but also in the Department's review of any innocent spouse claim, we do not believe that the requesting spouse should be required to provide the filing dates of the federal and state returns as a condition for processing the claim or for granting innocent spouse relief. In fact, it is possible that the Department might be in a better position than the requesting spouse to determine when the federal return was filed or whether a federal audit or collection action has occurred. Under the disclosure provisions of Code Section 6103(c), the requesting spouse may, by writing, authorize the IRS to disclose this information to the Department. In the alternative, the Department has the ability to obtain a broad spectrum of background information relating to a federal return from the IRS pursuant to the information exchange agreement now in place under Code Section 6103(d).

III. Procedures to Improve Review and Implementation of Innocent Spouse Relief.

In addition to the above suggested revisions to Form IT-285, we have identified certain aspects of the substantive innocent spouse review process within the Department that we wish to bring to your attention and which we recommend be modified to facilitate proper evaluation of an innocent spouse claim. As discussed above, Section 654 was designed to increase the availability of innocent spouse relief under state law and to conform state law to federal law.

A. *Administrative Review of Claims*

It is our understanding that different units within the Department currently process applications for relief under Form IT-285, depending on which type of relief is sought. Claims for traditional innocent spouse relief - and under the separation of liability election - are reviewed by the Tax Audit Bureau, whereas claims for equitable relief are reviewed by the Offer in Compromise Unit. This division of responsibilities may well have occurred by reason of some overlap of "equitable relief" issues reviewed by the Offer in Compromise Unit in applying subdivision eighteenth-d of Section 171 of the Tax Law (which grants authority to the Department to compromise joint return liabilities of taxpayers who are divorced, separated or living apart from their spouse). The Offer in Compromise unit may compromise the tax owed on a joint return liability only to the extent that the "offer amount" equals the spouse's liability for his/her allocable share of the joint return liability and it can be shown that collection of the entire liability cannot be accomplished by the Department within a reasonable period of time without imposing substantial economical hardship on the spouse seeking relief. In contrast to claims processed under the innocent spouse provisions of Section 654, where the request is for equitable relief, some amount would need to be paid by the "requesting spouse" as an "offer".

Notwithstanding some similarities in reviewing joint filer claims for relief in the context of an Offer in Compromise and in the context of an innocent spouse claim, we believe that it makes sense to have a single unit review all innocent spouse cases. The evaluations under the Offer in Compromise provisions and under the innocent spouse provisions are very different. The innocent spouse evaluation focuses on whether the liability is attributable to and should be enforced against the requesting spouse. In an Offer in Compromise evaluation, the focus is on whether the amount is collectible. In addition, taxpayers frequently ask for alternative types of relief and are, in fact, encouraged by the IRS to request "equitable relief" under Code Section 6015(f) in the event that relief is denied under Code Section 6015(b) or (c). The use of a single team or unit can provide greater consistency in how the applications are handled, and will ensure that the staff reviewing the application is familiar with all forms of relief and can consider alternative theories of relief.

B. ***Code Section 6015(b) claims***

- ***Streamlined review***

As stated in our earlier discussion recommending modifications to Form IT-285, we are concerned that taxpayers are not presently being routed into a streamlined review process when they qualify for the rebuttable presumption for relief under Section 654(c). This is a significant issue for individuals who have already expended considerable time and resources to obtain federal innocent spouse relief and who should be entitled to a relatively simple process to obtain comparable New York relief. A streamlined review process should be put in place to implement the objectives of the Section 654(c) presumption.

- ***Eliminating "economic unit" test***

We are also concerned that taxpayers may have been denied relief under Code Section 6015(b), as incorporated into New York law by Section 654, if they are still married to or living in the same household with the non-requesting spouse. The fact that the applicant is still part of an "economic unit" with the non-requesting spouse will apparently result in denial of innocent spouse relief by Department reviewers for all innocent spouse claims made after January 1, 1999, including those based on Code Section 6015(b).

This is contrary to the express provisions of Code Section 6015(b), where there is no requirement that the requesting spouse be divorced, separated or living apart from the non-requesting spouse. In fact, after the 1998 federal law changes enlarged and simplified the instances in which innocent spouse relief can be granted, many Code Section 6015(b) innocent spouse relief claims are now made by spouses who are still married to or living with the non-requesting spouse. This is because these individuals are not eligible for relief under the separation of liability election of Code Section 6015(c) or the equitable relief provisions of Code Section 6015(f) since both provisions either expressly or through IRS guidelines require that the requesting spouse be divorced, separated or living apart from the non-requesting spouse. In many cases, the requesting spouse may remain married to or still living with the non-

requesting spouse for economic dependency reasons or for personal or religious reasons. Eliminating the possibility of relief for these individuals because they remain with their spouses as an "economic unit" is contrary to Code Section 6015 (b) and Section 654. There is no "economic unit" test described in Publication 89 as a condition for relief under Code Section 6015(b).

We recommend that Department guidelines used by reviewers for evaluating innocent spouse claims under Code Section 6015(b) be clarified to ensure that relief not be denied to an applicant on the basis that the applicant is still part of an "economic unit" with the non-requesting spouse. As discussed earlier, if the claimant has been routed into the streamlined review process because he/she has been granted relief by the IRS under Code Section 6015(b), the factor of "marital status" should not be part of the Department's evaluation of the claim. Even where there is no prior federal grant of innocent spouse relief, the fact that the applicant is still married to or living with the non-requesting spouse should never be a ground for denial of a traditional innocent spouse claim under the New York counterpart to Code Section 6015(b).

C. *Eliminating Unnecessary Information*

As indicated above, only taxpayers requesting relief under Code Section 6015(f) for underpayments of tax on the originally filed tax return should be required to provide the current Part V information allocating each item of income and deduction on the original return between the spouses. As to all other claims for relief, Line 7 of Part II should be modified to leave space for a description of the item(s) on the tax return which gave rise to the deficiency which are allocable to the taxpayer's spouse. In the alternative, the Form could direct the taxpayer to attach such a listing and allocation. This would not be unduly burdensome to the taxpayer as the information requested will be limited to the items which form the basis of the deficiency. Furthermore, this information will be far more helpful to the Department than requiring the taxpayer to make a full re-creation of the entire tax return (as is now required under Part V), since it will allow an instant narrowing of the relevant issues.

Summary

We appreciate the opportunity to provide these comments and we would be pleased to discuss in more detail ideas for streamlining and simplifying the process for obtaining innocent spouse relief under New York law. We have attached in the Appendix a summary of our recommended changes to the present Form IT-285 for your consideration. However, a complete redesign of the Form IT-285 to determine, more expeditiously, the claims to be processed in a Section 654(c) streamlined review should also be considered.

Respectfully submitted,

Kimberly S. Blanchard
Chair

Enclosure

Cc: Michelle A. Cummings, Deputy Commissioner for Tax Policy Analysis
Robert C. Gola, Deputy Commissioner for Operations
Marilyn M. Kaltenborn, Director, Technical Services Bureau
Nonie Manion, Director, Taxpayer Services & Revenue Division
Joseph F. Gecewicz, Director, Tax Compliance Division

APPENDIX

SUMMARY OF RECOMMENDED CHANGES TO FORM IT-285 AND INSTRUCTIONS

Form IT-285 changes

1. Part I.
   - Line 5
     Following the question whether relief has been granted by the IRS, the applicant should be asked whether the New York adjustments are attributable to the same erroneous items as were present on the federal tax return.
2. Part II.
   - Line 7.
     The question should be modified to ask if there is "any part of the understatement of tax which is due to the erroneous items of your spouse?" For taxpayers, who mark "yes", the taxpayer should be instructed to describe the item(s) giving rise to the deficiency that are allocable to the spouse. A space to accommodate this description should be added to the form or, in the alternative, the taxpayer should be directed to attach the requested description to the form.

   - Line 8.
     Remove the instruction under box "NO", directing the taxpayer to line 9.

   - Add the following question after Line 8.
     Is your claim for relief based on Section 6015(b) of the Internal Revenue Code? [Add boxes for "yes" and "no".]

     Under the "yes" box, add:
     If you also answered "yes" to Line 5 of Part I, you are entitled to a rebuttable presumption that relief should be granted so long as the item(s) giving rise to the New York tax deficiency are the same as for the federal deficiency. If you answered "no" to Line 5 of Part I, you may request innocent spouse relief by attaching a statement in support of your claim.

     Under the "no" box, add:
     "Go to line 9."

2. Part III.

   - Line 12.
     Remove the instruction to "Go to line 13."

3. Part V.

- Consolidate this Part into "Part IV, Equitable Relief" and modify the instruction to require that the "allocation of items between spouses" be filled out only if the taxpayer is requesting equitable relief for an underpayment of tax that was properly shown on the originally filed tax return, but not paid.

CHANGES TO FORM IT-285 INSTRUCTIONS

1. "Line Instructions"- The "Line Instructions" that precede the instructions to Part I should be modified to reflect that Parts I and II are required of all taxpayers, and that taxpayers applying for innocent spouse relief may also be entitled to and apply for separation of liability (under Part III) and/or equitable relief (under Part IV and Part V).

2. The instructions to Part II should include a separate section indicating what documentation is required to support a claim for relief under the rebuttable presumption. The instructions should further clarify that the other instructions under Part II -- particularly the required statement under the caption "Requesting Innocent Spouse Relief" – do not apply to those taxpayers.

3. Instructions should be modified throughout to reflect above recommended changes to Form IT-285.