

## TAX UPDATE

# New IRS 'Offer In Compromise' Procedures And Tax Amnesty In NYC



Eric L. Morgenthal

By Eric L. Morgenthal

In this month's column I would like to discuss two developments in the field of Taxation. One takes place on the federal level and the other is a state/local tax savings program. However, before these items are discussed, I would like to take this opportunity to extend a wish for a safe return to my close friend U.S. Army CPT Vance Kuhner, Esq. Vance and I attended St. John's University School of Law together. Upon graduation, he had taken a position as an Assistant DA in the Queens County District Attorney's Office. Shortly after his legal career began, he answered the call of his country and for the past two years has been serving tours of duty in Afghanistan, Kuwait and now... Baghdad. It is my sincere hope that he returns home safely to his wife and family as soon as possible.

## Updated Procedure And Fee For The IRS Offer In Compromise

We've all seen the commercials on TV that claim that you can eliminate your tax deficiencies for "pennies on the dollar." What they were referring to was the IRS Offer in Compromise (OIC) Program. Unlike traditional installment payment arrangements, the OIC program enables qualifying taxpayers to pay only a portion of their taxes in full satisfaction of their

income is below the poverty levels indicated by the Department of Health and Human Services. These reduced income guidelines would only be applicable to individuals and not to those operating in entity form.

Is the OIC program destined for demise? It's beginning to seem that way. The Service has received continual bad press for generating extensive delays in processing these offers. Moreover, it appears doubtful that the addition of a \$150 charge is likely to help clear the pipeline and streamline the process. It is this author's opinion that the IRS's long-term future strategy will likely be to direct the focus of their efforts toward the implementation of enforceable installment arrangements in lieu of partial payment/debt forgiveness plans.

## The New York City Tax Amnesty Program

It is approximately 16 miles from the western Suffolk County border to the border of New York City. Many of us have clients that conduct business in the five boroughs. If yours haven't been meeting their tax filing obligations, then they may want to take advantage of this limited time tax saving opportunity. In light of the recent success obtained with the New York State Tax Amnesty Program, the New York State legislature had empowered the City

previously unfiled tax returns along with full payment of both the tax and the reduced interest imposed. Amnesty applications sent with less than full payment will be responded to with a bill. Ultimate acceptance of the amnesty application will then hinge upon the receipt of complete payment within the time period prescribed in the billing notice.

From a procedural standpoint, taxpayer payments made with the amnesty request will not be refunded if an amnesty application is denied. The payment made would instead be applied to that taxpayers' outstanding balance. Immediately after denial, the Department of Finance may then continue its collection enforcement activity. On the same note, the taxpayer can resume their protest of the tax once the denial is received. But be careful, the clock on the exercise of an existing protest or conciliation request keeps running while the amnesty application is pending.

## NYC Taxes Included

The program applies to taxes incurred before December 31, 2001 and Commercial Rent/Occupancy Taxes for the periods of May 31, 2001 and prior. But which taxes are included? Here's the list as indicated by the Department of Finance; Banking Corporation Tax, Cigarette Tax, Commercial Motor Vehicle Tax, Commercial Rent or Occupancy Tax,

ment agreement is already in place for that deficiency. Examples of an existing tax difficulty would be those under criminal investigation (by any NY state or local municipality), those who have been prosecuted or convicted of criminal tax charge and those who were the subject of a pending audit on March 10, 2003.

## Determination Of NYC Tax Due

As with the NYS Tax Amnesty Program, multiple resources have been placed in effect to assist taxpayers with establishing whether their tax returns remain unfiled, the amounts of their outstanding warrants and the tax savings benefits of participating. To confirm prior tax filings contact the Department of Finance at (718) 935-6000 or by writing to: NYC Department of Finance, Accounts Examination Unit, 25 Elm Place, 3rd Floor, Brooklyn, NY 11201. To inquire about any outstanding warrants, write to: 25 Elm Place, 4th Floor, Brooklyn, NY 11201 and indicate "Attention: Amnesty" on the envelope. Unfortunately, all responses will automatically be mailed to the last business address of record irrespective of the return address stated on the request. Taxpayers who have moved will first need to execute a change of address with the Department of Finance.

amounts owed. Another benefit is that the IRS will lift the tax liens recorded against the client immediately upon acceptance of an OIC instead of waiting until after all installments are paid.

The IRS has recently released Rev. Proc. 2003-71 to update the procedures for submitting an OIC. This Rev. Proc. was also released to implement changes made by the IRS Restructuring and Reform Act of 1998. Despite the release of this "new" Revenue Procedure, the available legal grounds for tendering an Offer in Compromise remain the same: doubt as to liability, doubt as to collectibility and promotion of effective tax administration. In addition, national and local standards will continue to be used in evaluating the taxpayer's allowable expenses. It should be noted that as of November 1, the IRS will only be accepting the current version of Form 656 (revised May 2001).

The highlight of Rev. Proc. 2003-71 is the new \$150 application fee for filing an OIC postmarked on or after November 1, 2003. The IRS has also stated that it will not even process an OIC application if a taxpayer is in bankruptcy or has not paid the user fee. If paid, the fee will be retained by the IRS if the offer is withdrawn, is deemed too low, or if additional financial and supporting documentation requested by the Service is not provided. According to the IRS, this added fee is being imposed to defray the costs of the program and to discourage frivolous offers.

Bear in mind that there are two sets of circumstances under which the IRS will not impose the \$150 application fee. The first is for offers submitted based solely upon a "doubt as to liability." The second is when the taxpayer's total monthly

of New York to undertake its own amnesty arrangement. On July 31, 2003 the NYC Department of Finance issued a press release that announced the program and set forth the groundwork stating some of the details.

NYC Tax Amnesty will run from October 20, 2003 to January 23, 2004. The program is generally applicable to business and excise tax matters with the exclusion of sales and use taxes. Real estate and personal income taxes will also be excluded from the program. Before you read any further, realize that the actual Tax Amnesty application forms are not scheduled for release until shortly before the program is set to begin. As a result, taxpayers should hold off on submitting any documentation prematurely to avoid the potential for mis-processing of the information. Forms and information will slowly be released as the program grows closer to commencement.

As with other state tax forgiveness programs, taxpayers granted amnesty will be able to dodge related penalties, pay a reduced rate of interest and can avoid potential criminal prosecution. Taxpayers will only be required to tender payment on the deficiency interest accrued since October 20, 2000. However, penalties and interest already paid outside the program will not be refunded if an application is accepted. In fact, refund claims will only be allowed if a mathematical error is discovered in the taxpayer's return.

One word of caution, installment arrangements will not be allowed under this Tax Amnesty Program. To trigger acceptance of an amnesty application, the taxpayer must complete and remit all pre-

General Corporation Tax, Horse Race Admissions Tax, Hotel Room Occupancy Tax, Real Property Transfer Tax, Tax on Coin Operated Amusement Devices, Tax on Retail Licensees of the State Liquor Authority, Tax on the Transfers of Taxicab Licenses, Tax upon Foreign and Alien Insurers, Unincorporated Business Tax (for Individuals & Partnerships), Utility Tax and Vault Charges. The bolded taxes described above will likely be the most prevalent ones filed under the program. Delinquent and deficient sole-proprietorships, corporations and small businesses tend to step forward when these opportunities arise.

### NYC Taxpayers Included

It was actually a bit surprising to see which taxpayers can qualify for the amnesty program. Taxpayers who have filed all of their NYC tax returns but remitted them late will still be permitted to request an abatement of the penalties and reduction in interest. Even those who have a pending NYC Offer in Compromise can obtain approval so long as their offer has not yet been accepted. Other qualifying taxpayers include those with a bill or Tax Warrant outstanding that haven't negotiated a payment installment arrangement. In addition, those who are in conciliation or are litigating their NYC tax can submit an amnesty application so long as they agree to withdraw or discontinue their proceedings.

So who's not included? In a nutshell, those with prior agreements in effect and those with existing NYC tax difficulties would not be eligible for amnesty. Prior agreements include previous amnesty arrangements or taxes for which an install-

### Forms And Additional Information

As with any amnesty program, multiple web addresses have been made to provide taxpayers with additional information. General information about the Tax Amnesty Program can be obtained at [www.nyc.gov/nyctaxamnesty](http://www.nyc.gov/nyctaxamnesty). The web site contains an online interest calculator for taxpayers to measure their savings from participating. If forms for years after 1996 are needed to prepare prior year tax returns, they are available at [www.nyc.gov/finance](http://www.nyc.gov/finance) or by calling 718-935-6739. In addition, the Department of Finance has a Tax Fax service where post 1992 forms can be obtained by calling 718-935-6114 from a telephone connected to a fax machine. The automated system prompts the caller with a series of questions and then faxes the forms requested. Answers to any additional questions can be obtained by emailing the Department of Finance at <https://www.nyc.gov/html/dof/html/emailemailamnesty.html>. The Department has indicated that a response to email inquiries will be provided within 10 business days.

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