



FINDING OF SUBSTANTIAL NEED FOR EARLIER IMPLEMENTATION

Chapter 201 of the Laws of 2009 added section 11-132 of the Administrative Code of the City of New York to authorize the New York City Commissioner of Finance to require by rule that in certain circumstances, City tax returns must be filed, and taxes must be paid, by electronic means. These amendments to the Filing Rules for New York City Income and Excise Taxes require that tax preparers who have filed more than one hundred of specified types of documents relating to the general corporation tax and/or to the unincorporated business tax using tax software in a previous year, must file these types of documents electronically beginning with documents filed in calendar year 2011. These amendments to the rules also require that taxpayers who prepare such documents themselves using tax software must file these documents electronically beginning with documents filed in calendar year 2011.

As the first tax returns that are affected by these rule amendments must be filed no later than February 15, 2011, early implementation of these rule amendments is necessary to impose the electronic filing requirement prior to the February 15, 2011 filing deadline.

Therefore, pursuant to section 1043(f)(1)(c) of the New York City Charter, the Department of Finance hereby finds that there is a substantial need for the earlier implementation of the amendments to the Filing Rules for New York City Income and Excise Taxes. Consequently, the attached amendments shall be effective upon the final publication of the rules in the City Record, and the requirement that thirty days first elapse after such publication shall not apply.

A handwritten signature in black ink, appearing to read "David M. Frankel", written over a horizontal line.

David M. Frankel
Commissioner of Finance

Approved:

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg", written over a horizontal line.

Michael R. Bloomberg, Mayor

Dated: February 2, 2011

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by section 11-132 of the Administrative Code of the City of New York and sections 389(b) and 1043 of the New York City Charter, I hereby promulgate the within amendments to Filing Rules for New York City Income and Excise Taxes. These rule amendments were published in proposed form on December 23, 2010. A hearing for public comment was held on January 24, 2011.

____ S/S _____
David M. Frankel
Commissioner of Finance

Note: New matter underscored; old matter in brackets [] to be deleted.

Amendments to the Filing Rules
for New York City Income and Excise Taxes

Section 1. Section 17-03 of chapter 17 of title 19 of the Rules of the City of New York (Filing Rules for New York City Income and Excise Taxes) is amended to read as follows:

§17-03 Electronic Filing and Payment.

(a) **General rule.** Notwithstanding anything to the contrary in any other section of these rules, in addition to requiring the electronic filing of returns under section 17-04 of these rules, the Commissioner of Finance may establish programs or systems whereby taxpayers or other persons required to file any return, report, or other form required to be filed with the Commissioner under Chapters 5, 6, 7, 9, 11, 12, 14, 21, 24 and 25 of Title 11 of the Administrative Code of the City of New York or the rules relating thereto, may elect to file any designated return through electronic means. As used in this section, the term "designated return" shall mean any return, report or other form required to be filed under such chapters or rules that the Commissioner has designated for filing through electronic means.

For purposes of Chapters 5, 6, 7, 9, 11, 12, 14, 21, 24, and 25 of Title 11 of the Administrative Code and these rules, an electronically filed designated return will be deemed to be filed on the date of issuance of a confirmation number or other evidence of filing, by the Commissioner, to the person filing the return. The issuance of such a confirmation number or other evidence of filing by the Commissioner shall be prima facie evidence that the person filed a return, as required under such Chapters or rules.

Any designated return filed electronically must be signed electronically by the same natural person or persons who are required to sign or certify the return under any provision of Title 11 of the Administrative Code or under these rules. The required person or persons will be deemed to have electronically signed the return upon the entry of each such person's identifying information in accordance with the instructions set forth by the Commissioner.

(b) **Electronic payment.** Notwithstanding anything to the contrary in any other section of these rules, in addition to requiring the electronic payment of tax under section 17-04 of these rules, the Commissioner of Finance may authorize a taxpayer, or other person required to collect and pay over any tax, to pay any tax due or moneys collected by means of an electronic funds transfer (EFT) from the person's cash account. Prior to making a payment of tax or moneys due, a taxpayer, or other person required to collect and pay over any tax, must be authorized by the Department of Finance to make EFT payments. To receive authorization, the taxpayer, or other person required to collect and pay over any tax, must execute an agreement on a form prepared by the Department of Finance in which the taxpayer, or other person required to collect and pay over any tax, furnishes the Department with all the account information requested by the Department to enable it to complete the EFT transaction. Such information shall include, but not be limited to, the name, location and number of the account from which an EFT shall be authorized. Where a taxpayer or other person has been authorized to make payment electronically, any such payment shall be deemed to have been made on a timely basis provided that, on or before midnight of the due date of such payment, the person authorizes the Commissioner to initiate payment and the payer's cash account is properly identified and contains sufficient funds to enable the successful completion of the EFT. For any such payment made electronically, the Commissioner shall debit the payer's account no less than 48 hours from the close of business on the due date of such payment.

§2. A new section 17-04 is added to chapter 17 of title 19 of the Rules of the City of New York (Filing Rules for New York City Income and Excise Taxes) to read as follows:

§17-04. Mandatory Electronic Filing and Payment.

(a) Definitions. For purposes of this section:

(1) "Authorized tax documents" means the (i) New York City General Corporation Tax Forms NYC-4S, NYC-4SEZ and NYC-3L, (ii) New York City Unincorporated Business Tax Forms NYC-204 and NYC-204EZ, and (iii) Form NYC-EXT, when filed to request an extension for filing any of the aforementioned forms.

(2) "Electronic" means computer technology.

(3) "Original tax document" means a tax document that is filed during the calendar year for which that tax document is required or permitted to be filed. Such term includes extensions, amended returns, returns for prior years, returns for estimated tax payments and any other New York City tax documents regardless of whether such documents are defined in this subdivision as authorized tax documents.

(4) "Tax" means any tax or other matter administered by the Commissioner of Finance pursuant to the Administrative Code or any other provision of law.

(5) "Tax document" means a return, report or any other document relating to a tax or other matter administered by the Commissioner of Finance.

(6) "Tax return preparer" means any person who prepares for compensation, or who employs or engages one or more persons to prepare for compensation, any authorized tax document. For purposes of this section, the term "tax return preparer" also includes a payroll service.

(7) "Tax software" means any computer software program intended for tax return preparation purposes. The term "tax software" includes, but is not limited to, an off-the-shelf software program loaded onto a tax return preparer's or taxpayer's computer, an online tax preparation application, or a tax preparation application hosted by the Department of Finance.

(b) Who must file and pay electronically. Notwithstanding anything to the contrary in this title, for filings made during any calendar year beginning on or after January 1, 2011,

- (1) tax return preparers as described in subdivision (c) of this section, and
- (2) entities who meet the criteria specified in subdivision (d) of this section,

are required to file authorized tax documents electronically. In any case in which authorized tax documents are required to be filed electronically, the taxpayer shall pay any tax liability or other amount due shown on, or required to be paid with, an authorized tax document, by means of an electronic funds transfer.

(c) Filing by a tax return preparer. (1) A tax return preparer who (i) prepared more than one hundred original tax documents during any calendar year beginning on or after January 1, 2009, and (ii) prepares one or more authorized tax documents using tax software in any succeeding calendar year shall file electronically all authorized tax documents prepared by such tax return preparer for that succeeding calendar year (other than the calendar year beginning on January 1, 2010) and for each subsequent calendar year thereafter.

(2) For purposes of paragraph (1) of this subdivision, the number of original tax documents that have been prepared by the tax return preparer shall be the sum of the number of original tax documents prepared by the tax return preparer and, if the tax return preparer is a member of a firm, all of the members of the firm. If the firm has multiple locations, the combined total of original tax documents prepared by members of the firm at all locations shall be included in the calculation.

(d) Filing by a taxpayer. A corporation subject to tax under Chapter 6 of Title 11 of the Administrative Code of the City of New York or an unincorporated entity subject to tax under Chapter 5 of Title 11 of the Administrative Code of the City of New York that (1) does not utilize a tax return preparer to prepare an authorized tax document during any calendar year beginning on or after January 1, 2010, and (2) prepares that document itself using tax software shall file electronically all authorized tax documents prepared by such taxpayer using tax software for that calendar year and for each subsequent calendar year thereafter.

(e) Failure to file or pay electronically. With respect to authorized tax documents that are filed in any calendar year that begins on or after January 1, 2011:

(1) Tax return preparer. If a tax return preparer is required to file authorized tax documents electronically

pursuant to this section, and that preparer fails to file one or more of those documents electronically, then that preparer shall be subject to a penalty of fifty dollars for each failure to file electronically an authorized tax document, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. For purposes of this paragraph, reasonable cause shall include, but not be limited to, a taxpayer's election not to file electronically the authorized tax document.

(2) Taxpayer. If a taxpayer is required to pay electronically any tax liability or other amount due shown on, or required to be paid with, an authorized tax document required to be filed electronically pursuant to this section, and that taxpayer fails to pay electronically one or more of those liabilities or other amounts due, then that taxpayer shall be subject to a penalty of fifty dollars for each failure to pay electronically.

(3) Assessment and collection of penalties. The penalties provided for by this subdivision shall be paid upon notice and demand, and shall be assessed, collected and paid in the same manner as the tax to which the electronic transaction relates.

Basis and Purpose of Amendments

Chapter 201 of the Laws of 2009 enacted section 11-132 of the Administrative Code of the City of New York, which authorizes the New York City Commissioner of Finance to require by rule that, in certain circumstances, City tax returns must be filed, and taxes must be paid, by electronic means. These amendments to the Filing Rules for New York City Income and Excise Taxes require that tax preparers who have filed more than one hundred of certain types of documents relating to the general corporation tax and/or to the unincorporated business tax using tax software in a previous year, must now file these types of documents electronically. In addition, taxpayers who themselves prepare such documents using tax software are required to file these documents electronically.