

02-4

October 25, 2002  
revised

## **FINANCE MEMORANDUM**

**Explanation of  
Taxpayer Assistance Act of 2002**  
(Ch. 513, Laws of New York 2002)

Below is a summary of the major provisions of Chapter 513 of the Laws of New York 2002, known as the Taxpayer Assistance Act of 2002 (the "Act"). The Act was signed by Governor Pataki on September 17, 2002.

**Department Authorized to Accept Offers in Compromise**  
*City Charter §1504.2.*

The Act amended the New York City Charter to authorize the Department of Finance to compromise any liability for City-administered income or excise taxes (but not real property taxes) for less than the full amount owed. Modeled after the law giving the New York State Department of Taxation and Finance authority to compromise State taxes and State-administered City taxes, the new law allows the Department to compromise tax liabilities, including warrants or judgments for any such tax or charge, where the collectibility of the full amount of the liability is questionable.

Under this provision, the Department may only compromise the liability if the taxpayer has been discharged in bankruptcy or is insolvent and the amount to be paid is not less than what could be recovered through legal proceedings. Where the amount of tax liability, exclusive of interest and penalties, is more than \$100,000, any compromise must be approved by a justice of the New York State Supreme Court. The Act also amended New York State Tax Law section 171 to conform the provision requiring court approval to the dollar amounts provided under the City Charter provision.

The Department will adopt rules to provide taxpayers with guidelines for making offers in compromise under this provision.

The Act also amends the City Charter to conform the Department's authority to compromise civil liability for any such tax or charge to the comparable authority of the New York State Department of Taxation and Finance where the liability has not become final.

## **Vacating Tax Warrants**

*Act §§24-40.*

The Act authorizes the Commissioner of Finance to vacate tax warrants for unpaid income and nonproperty excise taxes without a court order if the interests of the City will not be jeopardized. The vacate order would be effective as of the original docketing date. Previously, when the Department of Finance determined that a warrant should be vacated, the agency was required to make a motion for an order of the New York State Supreme Court to vacate the warrant. This legal process took months to complete. Meanwhile, the taxpayer's credit could be impaired by the presence of the outstanding warrant.

The Act also authorizes the Commissioner to release a taxpayer's property from a tax lien arising under the excise taxes administered by the Department of Finance. The Commissioner's authority to release a taxpayer's property from a lien previously was limited to releasing property from business income tax liens.

## **Conformity with Federal and State Acceptance of Private Delivery Services**

*Act §§1-21.*

The Act amends the mailing rules under all of the taxes administered by the Department of Finance to provide that a document delivered by a designated private delivery service will be deemed to be filed for City tax purposes on the date recorded or marked by the private delivery service. The new rules apply to Real Property Tax payments as well. These rules make deliveries by designated private delivery services comparable to deliveries by the United States Post Office. Under prior law, documents delivered to the Department by a private delivery service were deemed filed on the date received by the Department.

A private delivery service approved by the IRS will be considered designated for City purposes although the Commissioner has authority to withdraw the designation or designate additional private delivery services if they meet the applicable federal criteria. The following private delivery services have been approved by the IRS: (i) Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, and Second Day Service; (ii) DHL Worldwide Express (DHL): DHL "Same Day" Service and DHL USA Overnight; (iii) Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day, FedEx International Priority, and FedEx International First; and (iv) United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express. IRS Notice 2002-62, 2002-39 IRB (9/5/02). The same mailing rules will apply for purposes of mailing documents to the New York City Tax Appeals Tribunal but if the Commissioner withdraws a designation or makes any additional designation, it is not effective for purposes of the Tax Appeal Tribunal unless and until the President of the Tribunal ratifies the change.

**Taxpayers wishing to use a designated private delivery service to file any tax return usually filed at a post office box address should use the following street address:**

**NYC Tax Processing Center  
101 Enterprise Drive  
Kingston, NY 12401-7401**

**Taxpayers filing returns at the above address should include the following number on any tracking slip for a private delivery service:**

**(845) 336-3200**

The new rules apply to the mailing of any document required to be filed, and to any payment required to be made, on or after October 17, 2002.

## **Qualified Subchapter S Subsidiaries (QSSSs) and S Corporations Subject to the Bank Tax**

*Ad. Code §§11-602.8(iv), 11-605.3, 11-641(a)(4), 11-646(e).*

For tax years beginning after 1996, the Department has directed General Corporation Tax ("GCT") and Banking Corporation Tax ("Bank Tax") taxpayers to treat QSSSs as separate and distinct corporations and to determine their entire net income as if no QSSS election has been made. The Department also has directed S corporations that are banking corporations to compute entire net income for Bank Tax purposes as if an election under Subchapter S had not been made. *See*, Addenda to Instructions for forms NYC-4S, NYC-3L, NYC-1, NYC-3A and NYC-1A and Finance Memorandum 99-3. The Act amends the Administrative Code to clarify the treatment of QSSSs and banking corporations that are federal S corporations, consistent with those prior publications effective for tax years beginning after December 31, 1996. The Act also amends the Administrative Code, relating to taxpayers' obligations to report various federal and New York State changes to the Commissioner, to impose the same reporting requirements on shareholders of QSSSs and Bank Tax S corporations as currently apply to S corporation shareholders under the GCT. These last amendments became effective September 17, 2002.

### **Allocation of Gross Receipts of Publishing and Broadcasting Businesses**

*Ad. Code §§11-508(e-1), 11-604.3(a)(2), 11-604.3(a)(9).*

For taxable years beginning after June 1, 1996, the Unincorporated Business Tax ("UBT") was amended to allow taxpayers substantially engaged in publishing periodicals and newspapers to allocate their gross income from subscriptions and advertising using an indirect method based on the point of delivery of the publication. A comparable rule was enacted allowing broadcasters to allocate gross income from subscriptions, programs and commercials using an indirect method based on audience location. Under the GCT, such an indirect method was available for publishers of periodicals and newspapers and for broadcasters only for receipts from advertising and broadcasting commercial messages, which were treated as receipts from the provision of services. *Ad. Code §11-604.3(a)(2)(B), Title 19 Rules of the City of New York §11-65(b)(3)(ii).*

The Act amends the UBT to substitute a direct allocation method for income from the sale of subscriptions to subscribers for periodicals, newspapers and radio or television broadcast programs based on the mailing address or billing address of the subscriber for taxable years beginning on or after January 1, 2002. Subscribers for this purpose are defined as members of the general public who receive the publication or broadcast and who do not redistribute it. This amendment was necessary to more accurately take into account situations where subscription rates for the same services or periodical may differ from location to location.

The Act also amends the GCT to conform the allocation rules for gross receipts of publishers and broadcasters from sales of advertising, subscriptions and program services to the rules under the UBT, as amended by the Act, for taxable years beginning on or after January 1, 2002.

### **Partnership Defined for City Tax Purposes**

*Ad. Code §§11-126, 11-501, 11-602.1(c).*

The definition of a partnership for purposes of Title 11 of the Administrative Code, and specifically for purposes of the GCT and UBT, has been amended to conform with the federal income tax definition for taxable years beginning after 2001. Thus, an entity classified as a partnership for federal income tax purposes will be subject to the UBT and not the GCT even if it is incorporated.

**NOTE:** *Finance Memoranda are advisory in nature and are merely explanatory. Finance Memoranda are not declaratory rulings or rules of the Department of Finance and do not have legal force or effect, do not set precedent and are not binding on taxpayers.*