



FINANCE
NEW YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

DEPARTMENT OF FINANCE

05-7 September 21, 2005

FINANCE MEMORANDUM

Guidance for Taxpayers Electing to Participate in the New York State Tax Shelter Voluntary Compliance Initiative

I. Background

The State's Tax Shelter Voluntary Compliance Initiative ("VCI") was authorized by Chapter 61 of the Laws of New York of 2005, Part N, section 11, as amended by Chapter 63, Part A, section 18 of such laws. The VCI offers a waiver of penalties (not interest or tax liability) for eligible participants who come forward voluntarily to disclose their participation in tax avoidance transactions (a "tax shelter") for tax years beginning before January 1, 2005, provided they pay the amount of tax that should have been paid but for their participation in the tax shelter and any interest. To get a full waiver of penalties, taxpayers participating in the VCI have to waive any right to request a refund of the amounts paid. However, the VCI also allows taxpayers to participate while reserving their right to protest the liability in question. Taxpayers electing this option are entitled to a waiver of penalties *other than* the negligence or substantial understatement penalties. For information about the VCI, see Publication 671, New York State Department of Taxation and Finance.

II. SCOPE

This Finance Memorandum establishes guidelines for resolving liabilities for the New York City Unincorporated Business Tax ("UBT"), General Corporation Tax ("GCT") and Banking Corporation Tax ("Bank Tax") of taxpayers electing to participate in the VCI for periods beginning prior to January 1, 2005.

The settlement procedures set forth below ("Settlement Procedures") will not be available for resolving refund claims for any period.

For taxpayers satisfying all of the requirements of the Settlement Procedures, Finance will waive the following penalties that could be imposed on the taxpayer with respect to the tax shelter transactions under sections 11-525 and 11-676 of the Administrative Code of the City of New York: late filing and late payment penalties (Ad. Code §§11-525(a), 11-676.1(a)-(c)), negligence penalties (Ad. Code §§11-525(b)(1) & (2), 11-676.2(a) & (b)), fraud penalties (Ad. Code §§11-525(f) and 11-676.6) and substantial understatement penalties (Ad. Code §§11-525(j) and 11-676.11). In addition, the Commissioner of Finance will not pursue criminal prosecution in connection with such tax shelter transactions of any taxpayer satisfying all of the requirements of the Settlement Procedures. No portion of the interest due will be waived.

The Settlement Procedures are only available on the condition that the taxpayer files original or amended returns reversing all tax shelter transactions for each open tax period affected by the tax shelter transactions and pays 100 percent of the tax plus interest due as a result of reversing all tax shelter transactions for the applicable periods ("Outstanding Liabilities").

As a further condition, taxpayers participating in the Settlement Procedures must waive any right to protest or request a refund with respect to the amounts paid, regardless of which Filing Option under the VCI the taxpayer has elected. However, taxpayers participating in the Settlement Procedures will be able to request a refund or protest any assessment of tax with respect to the original or amended returns filed for the periods covered by the Settlement Procedures relating to any item on the returns other than items relating to the tax shelter transactions required to be reversed on such returns.

The Settlement Procedures will not apply to liabilities for taxes or penalties due for periods beginning on and after January 1, 2005. The Settlement Procedures are not available for any New York City taxes or charges administered by the New York City Department of Finance other than the UBT, GCT and Bank Tax.

The benefits of the Settlement Procedures will not be available to persons other than taxpayers, *i.e.*, return preparers, tax shelter promoters or other tax advisors are not eligible to participate in the Settlement Procedures.

Taxpayers participating in the Settlement Procedures must pay 100 percent of the tax and interest due as a result of reversing all tax shelter transactions for each open tax period affected by the tax shelter transactions. No partial reversal will be allowed. If the Department of Finance determines that the Taxpayer has not paid the correct amount of tax required to be paid under the Settlement Procedures, any additional tax plus interest and any applicable penalties will be assessed.

PLEASE NOTE:

Taxpayers not participating in the Settlement Procedures are nevertheless required to comply with existing requirements to report to the Department of Finance any final change or correction under Code sections 11-519, 11-605.3 and 11-646(e).

III. WHO IS ELIGIBLE

The Settlement Procedures will be available to an Eligible Taxpayer, which is defined as a taxpayer that meets all of the following requirements:

1. The taxpayer has met all of the eligibility requirements for the VCI.
2. The taxpayer has filed the requisite application and amended or original returns and other submissions under the VCI and has paid the full amount of tax and interest due with respect to the tax shelter transactions covered by the VCI, or has entered into an installment payment agreement for such amounts, and the taxpayer's original or amended returns have been accepted under the VCI.
3. The taxpayer was not a party to any litigation or administrative proceeding pending with the New York City Department of Finance Conciliation Bureau, the New York City Tax

Appeals Tribunal or any court of this state or the United States on October 1, 2005 relating to any action or failure to act which is the basis for the New York City tax penalties with respect to which relief is sought unless the taxpayer agrees to withdraw with prejudice from the proceeding as a condition of participating in the Settlement Procedures.

4. The taxpayer has not been convicted of a crime relating to the New York City tax that is the basis for the New York City tax penalties with respect to which relief is sought.
5. The taxpayer has not reached an agreement with the Department of Finance settling a liability arising out of an examination of the tax shelter transactions that are the subject of an application under these Settlement Procedures and is not the subject of a final assessment arising out of such an examination.
6. A partnership, limited liability partnership or limited liability company taxed as a partnership, will not be considered an Eligible Taxpayer unless the partnership and each of its members or partners that is a New York City business taxpayer have met each of the above requirements.

IV. SETTLEMENT PROCEDURES

To settle Outstanding Liabilities, an Eligible Taxpayer must, on or after October 1, 2005 and on or before March 1, 2006:

1. Submit a copy of the VCI application, all amended or original returns, disclosure statements and any other documents submitted to the New York State Department of Taxation and Finance as part of the VCI application.
2. Submit signed amended New York City returns for the appropriate tax and for each open tax period affected by the tax shelter transactions that were the subject of the VCI application, or, if no City returns were filed, submit signed original returns for such tax and periods.
3. Submit a signed closing agreement in the form attached hereto or such other equivalent form as the Department of Finance may, in its discretion, accept.
4. An Eligible Taxpayer that is a partnership, limited liability partnership or limited liability company taxed as a partnership must submit all of the above documents for itself and each of its members or partners that would be required to file a return under the UBT, GCT or Bank Tax with respect to its distributive share of income, gain, loss or deduction from the Eligible Taxpayer. A copy of the Taxpayer's federal tax return Form 1065 including all Schedules K-1 for each year covered by the Settlement Procedures must be submitted.

All returns, forms, closing agreements, and checks should be sent to:

New York City Department of Finance
Audit Division, Desk Audit Unit
345 Adams Street, 7th Floor
Brooklyn, NY 11201
Attn: Voluntary Compliance

EXHIBIT

CLOSING AGREEMENT

WHEREAS _____ **having Taxpayer Identification Number** (hereafter identified as the "Taxpayer") and the New York City Department of Finance (the "Department") wish to settle and resolve the Taxpayer's liability for Outstanding Liabilities (as defined in Finance Memorandum 05-).

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Taxpayer and the Department that:

1. The Taxpayer has submitted amended or original returns for the period(s) _____ showing Outstanding Liabilities for New York City _____ Tax (the "Tax") of \$ _____ plus applicable interest (the "Settled Liability") with respect to the tax shelter transactions reversed on the attached amended or original tax returns.
2. The Settled Liability shown in paragraph 1 is currently due and owing and the Taxpayer will pay the said liability pursuant to the terms stated in paragraph 3 hereof without protest.
3. The Taxpayer has delivered to the Department a check made payable to the "New York City Department of Finance" for the Settled Liability shown in paragraph 1 with interest to a date ten days prior to the date such check is delivered to the Department.
4. The Department will not seek criminal prosecution with respect to the tax shelter transactions referred to in paragraph 1 and will waive following penalties with respect to the Settled Liability: late filing and late payment penalties (Ad. Code §§11-525(a), 11-676.1(a)-(c)), negligence penalties (Ad. Code §§11-525(b)(1) & (2), 11-676.2(a) & (b)), fraud penalties (Ad. Code §§11-525(f) and 11-676.6) and substantial understatement penalties (Ad. Code §§11-525(j) and 11-676.11).
5. This Agreement shall not be binding on either the Taxpayer or the Department until signed by both the Taxpayer (or the Taxpayer's authorized representative) and

the Commissioner of Finance (or his or her authorized representative). The Taxpayer and the Department hereby represent that the persons signing below are duly authorized to sign on behalf of their respective parties. If an authorized representative signs this Agreement on behalf of the Taxpayer, a fully executed Power of Attorney must be attached hereto authorizing such representative to sign this Agreement.

6. This Closing Agreement is final, conclusive and irrevocable with respect to the Settled Liability, except upon a showing of fraud, malfeasance or misrepresentation of material fact contained herein or in any of the documents, returns or other materials submitted in connection herewith that induced the Department to enter into this agreement. The Taxpayer hereby waives any and all right to or claim for credit/refund of all or any part of any payment of the Settled Liability whether heretofore paid or to be paid hereunder. Taxpayer waives any and all rights to protest the amounts paid under paragraph 3 hereof before the Conciliation Bureau of the Department of Finance, the New York City Tax Appeals Tribunal or otherwise. Nothing in this Closing Agreement shall be deemed to limit the Taxpayer's right to request a refund or protest any assessment with respect to any item for the tax and period(s) covered by this Closing Agreement other than the tax shelter transactions required to be reversed on the amended or original returns filed in connection herewith. In addition, nothing in this Closing Agreement shall be deemed to limit the Department's authority to audit the Taxpayer with respect to the tax and period(s) covered by this Closing Agreement and to assess additional tax for such period(s) whether arising out of the tax shelter transactions or otherwise.

7. This Closing Agreement is strictly confidential and not for disclosure, publication or release unless such disclosure, publication or release is required by law.

8. This Closing Agreement when fully executed shall be binding upon and inure to the benefit of the parties hereto and their administrators, successors and assigns.

9. The Department of Finance and the Taxpayer hereby certify that they have read this Closing Agreement and accept its terms.

IN WITNESS WHEREOF, the parties have executed this Closing Agreement on the dates shown below.

COMMISSIONER OF FINANCE

By: _____ Date: _____

Print Name: _____

TAXPAYER: _____

By: _____

Title: _____ Date: _____

Print Name: _____