

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

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 and 1504 of the New York New York City Charter, I hereby promulgate the within amendment to the Rules Relating to offers in compromise. These rules were published in proposed form on July 21, 2003. A hearing for public comment was held on October 7, 2003.

/S/ Martha E. Stark
Commissioner of Finance

Section 1. Title 19 of the Rules of the City of New York is amended to add a new Chapter 34 to read as follows:

Chapter 34

Offers-in-compromise

§34-01 Definitions

§34-02 General Authority

§34-03 Filing

§34-04 Review

§34-05 Rejection

§34-06 Acceptance

§34-07 Other Rights and Powers Preserved

§34-01 Definitions. Unless the context of these Rules require otherwise, the definitions contained in this section shall apply throughout this chapter.

City. “City” means the City of New York

City Charter. “City Charter” means the Charter of the City of New York.

Code. “Code” means the Administrative Code of the City of New York

Commissioner of Finance. “Commissioner of Finance” means the Commissioner of Finance of the City of New York.

Compromise agreement. “Compromise agreement” means the agreement between the Department and the taxpayer as described in subdivision (b) of section 34-06 of these Rules.

Compromise amount. “Compromise amount” means the total amount required to be paid in accordance with the terms of the compromise agreement.

Conciliation Bureau. “Conciliation Bureau” means the Conciliation Bureau of the Department of Finance of the City of New York established under section 38-02 of these rules as authorized by section 11-124 of the Code.

Department. “Department” means the Department of Finance of the City of New York.

Doubt as to collectibility. “Doubt as to collectibility” means the taxpayer has been discharged in bankruptcy or can be shown, by proof, to be insolvent.

Doubt as to liability. “Doubt as to liability” means there is some doubt as to the taxpayer’s liability and whether the Department could prevail against the taxpayer in administrative or judicial proceedings.

Fixed and final matter. “Fixed and final matter” means a matter where the tax liability or administrative action taken by the Department has been finally fixed and the taxpayer no longer has any right to administrative or judicial review.

Insolvent. “Insolvent” means a person’s liabilities exceed the fair market value of the person’s assets. In determining the liabilities of a taxpayer, all liabilities will be included, including the amount of the taxpayer's tax debt.

Non-final matter. “Non-final matter” means a matter that is not a fixed and final matter.

Statutory notice. “Statutory notice” means any written notice of the Commissioner of Finance that gives a person the right to a hearing in the Tribunal or the right to request a conciliation conference, including but not limited to, a notice of determination of tax due, tax deficiency or a disallowance of a refund.

Taxpayer. “Taxpayer” shall mean the person or persons primarily liable for a tax or a vault charge, including interest, penalties and additions to the tax or charge, and any person who is or may be secondarily liable for any such tax or charge under any provision of title 11 of the Code or any other provision of law, including any person liable under any trust fund relationship with the City or as a transferee of or successor-in-interest to any other person liable for the tax or charge.

Tribunal. “Tribunal” shall mean the New York City Tax Appeals Tribunal as defined in Section 1 of Chapter 1 of Title 20 of these Rules.

§34-02 General Authority

(a) The Commissioner of Finance is authorized to compromise any civil liability for income or non-property excise taxes or annual vault charges or any warrant or judgment for income or non-property excise taxes or annual vault charges administered by the Department of Finance, and the civil penalties, interest and additions to tax or charge in connection therewith. Fixed and final matters may be compromised only on the basis of doubt as to collectibility. Non-final matters may be compromised only on one or both of the following grounds:

(1) doubt as to collectibility;

(2) doubt as to liability.

(b) In non-final matters, the Corporation Counsel may similarly compromise any such civil liability after reference of a case to the New York City Law Department for prosecution or defense, but prior to the time the tax or charge becomes a fixed and final matter.

(c) Where the offer-in-compromise is based in whole or in part on doubt as to collectibility, the

compromise amount cannot be less than the amount the Department could collect through legal proceedings. Therefore, when determining doubt as to collectibility, the Department will consider the legal collection proceedings available to it. Hardship or any other issue that does not have a direct bearing on the Department's legal ability to collect from the taxpayer cannot be considered in assessing doubt as to collectibility. Where two or more taxpayers are or may be responsible for the liability, the Department will consider doubt as to collectibility independently for each taxpayer.

§34-03 Filing

(a) Form, Contents and Supporting Documentation

(1) An offer-in-compromise must be filed on the form or forms prescribed by the Department for such purpose at the address prescribed in the forms. In the discretion of the Commissioner of Finance, an offer-in-compromise may be filed on forms prescribed by another taxing authority provided that those forms contain the information required by this subdivision.

(2) Contents of offer-in-compromise. The offer-in-compromise must contain:

(i) the taxpayer's name, address and taxpayer identification number (employer identification number or social security number);

(ii) the name, address and telephone number of the taxpayer's representative (if applicable);

(iii) the tax liabilities included in the offer-in-compromise, which, in the case of an offer based in whole or in part on doubt as to collectibility, must consist of all outstanding liabilities for all City-administered income, non-property excise taxes and annual vault charges;

(iv) the total amount the taxpayer is offering to pay;

(v) a brief indication of the grounds for the offer-in-compromise; and

(vi) the taxpayer's agreement to comply with the Department's general conditions for accepting the offer-in-compromise (see subdivision (d) of section 34-05 of these Rules).

(3) Supporting Documentation

(i) An offer-in-compromise based in whole or in part on doubt as to collectibility requires a showing that the taxpayer has been discharged in bankruptcy or is insolvent. The taxpayer must submit a statement of financial condition and the other information and documents specified on the forms prescribed by the Department. The Department may require the submission of additional financial information or documents that the Department deems necessary, including current financial statements that have been

audited by an independent licensed public accountant or an independent certified public accountant. The statement of financial condition, and any other information submitted to support an offer-in-compromise, becomes the property of the Department and will not be returned to the taxpayer.

(ii) An offer-in-compromise based in whole or in part on doubt as to liability must be supported by appropriate facts, evidentiary documents and legal arguments submitted in writing by the taxpayer. The Department may require the taxpayer to submit additional information or documents that the Department deems necessary. The acceptable offer-in-compromise amount will depend upon the degree of doubt determined by the Department in the particular case.

(4) The taxpayer shall file an original and three conformed copies of the required offer-in-compromise forms and supporting documentation.

(b) *Time for Filing*

(1) In fixed and final matters an offer-in-compromise may be filed at any time prior to the full payment of the liability.

(2) In non-final matters, an offer-in-compromise may be filed only after the issuance to the taxpayer of a statutory notice and before the non-final matter becomes a fixed and final matter. Where the taxpayer has requested a conciliation conference and/or filed a petition with the Tribunal:

(i) If the taxpayer has requested a conciliation conference and no conciliation decision has been issued and served in the matter, the offer-in-compromise may be filed during the time the matter is pending in the Conciliation Bureau;

(ii) If a conciliation decision has been issued and served, or if the taxpayer has not requested a conciliation conference, and the Tribunal has not issued a final decision and given notice of such decision, the offer-in-compromise must be filed within the statutory period (ordinarily 90 days) for filing a petition with the Tribunal or during the time the matter is pending in the Tribunal;

(iii) If the Tribunal has issued a final decision in the matter and given notice of such decision, the offer-in-compromise must be filed within the four-month period provided for the taxpayer to seek judicial review of the Tribunal's decision.

(c) *Effect.*

(1) The filing of an offer-in-compromise shall not:

(i) constitute the filing of a request for conciliation (see Chapter 38 of Title 19 of these Rules) or a petition or exception to the Tribunal (see Title 20 of these Rules);

(ii) constitute cause for postponement of a conciliation conference or any hearing, motion or other proceeding in the Tribunal; or

(iii) suspend the running of the period of limitations for filing a request for a conciliation conference, a petition or exception to the Tribunal, or to seek judicial review of a Tribunal decision;

(iv) operate to stay the collection of any tax or charge liability. However, enforcement of collection may be deferred if the interests of the Department will not be jeopardized.

(2) In non-final matters, the filing of the offer-in-compromise constitutes the taxpayer's waiver of the statute of limitations on the assessment of the tax liability involved for the period beginning on the day the offer-in-compromise is filed and ending six months after the date the offer-in-compromise is withdrawn or rejected. If the offer-in-compromise is accepted, as a condition of such acceptance, the taxpayer agrees to waive the statute of limitations as provided in paragraph (5) of subdivision (d) of section 34-04 of this chapter.

§34-04 Review

(a) *Process*

(1) Where an offer-in-compromise is based solely on doubt as to collectibility, the Department's Collections Division shall review the offer-in-compromise. If the offer-in-compromise was filed with a bureau or division of the Department other than the Collections Division, that bureau or division shall refer such offer-in-compromise to the Collections Division for review.

(2) Where the offer-in-compromise is based in part on doubt as to collectibility and in part on doubt as to liability, the offer-in-compromise shall be first reviewed by the Collections Division pursuant to paragraph (1) of this subdivision and thereafter by Office of Legal Affairs pursuant to paragraph (3) of this subdivision.

(3) Where an offer-in-compromise is based solely on doubt as to liability, the Department's Office of Legal Affairs shall review the offer-in-compromise. If the offer-in-compromise was filed with a bureau or division of the Department other than the Office of Legal Affairs, that bureau or division shall refer the offer-in-compromise to the Office of Legal Affairs.

(4) If the offer-in-compromise is not complete when filed, the division reviewing the offer may hold the offer-in-compromise in abeyance. In such a case, the taxpayer will ordinarily have 30 days after notification from the division reviewing the offer in which to complete the offer-in-compromise and supply any required information or documentation, unless the taxpayer can demonstrate to the satisfaction of that division that more time is necessary. If the offer-in-compromise is not completed within the required time period, the offer will be deemed to have

been withdrawn by the taxpayer under subdivision (c) of this section. The division reviewing the offer will give the taxpayer written notice of this deemed withdrawal.

(5) The acceptance of an offer-in-compromise will not be a ground for acceptance of any other subsequent offer-in-compromise regarding prior, concurrent, or subsequent periods or liabilities for the same or any other tax or charge.

(b) *Good Faith Filing.* The taxpayer must act in good faith in making the offer-in-compromise. The Department will work with the taxpayer, to the extent possible, to try to effect a compromise likely to be accepted by the Commissioner of Finance. Generally, once an offer-in-compromise has been rejected, that offer-in-compromise may not be reconsidered, and another offer covering any of the same tax liabilities will not be considered. However, the Department may reconsider an offer that has been rejected, or consider another offer with respect to the same liabilities if the taxpayer can show a material change in circumstances.

(c) *Withdrawal*

(1) Procedure. An offer-in-compromise may be withdrawn by the taxpayer making the offer-in-compromise at any time prior to its acceptance or rejection. The Department may deem an offer-in-compromise to be withdrawn pursuant to paragraph (5) of subdivision (a) of this section if the offer-in-compromise is incomplete and requested information is not submitted to the Department in a timely manner.

(2) Effect. If an offer-in-compromise is withdrawn, the Department will have the same rights that it would have had with respect to any liability that was the subject of the offer-in-compromise, including all rights to enforce and collect the liability, had the offer-in-compromise not been submitted.

(d) *Conditions for Acceptance.* No offer-in-compromise will be accepted unless the taxpayer:

(1) agrees to pay an amount in addition to all amounts previously paid or collected against the tax liability, including all amounts to which the taxpayer may be entitled through overpayments of tax, interest or penalties, for periods ending before or as of the end of the calendar year in which the offer is accepted;

(2) agrees to immediately return to the Department any refunds of overpayments received by the taxpayer after the taxpayer's offer was filed;

(3) agrees to waive the right to seek a refund of any payment of the compromise amount or any other amounts paid or collected against the liability that is the subject of the offer-in-compromise;

(4) agrees not to contest in court or otherwise, the amount of the liability to be compromised, and, in non-final matters, withdraws from any proceeding with respect to the liability pending in the Conciliation Bureau, the Tribunal or any other court;

(5) waives the running of the statutory period of limitations on collection of the liability to be compromised for the period beginning on the day the offer-in-compromise is filed and ending one year following the date on which the compromise amount has been paid in full (including any interest due on any installment thereof);

(6) agrees to comply with all provisions of the Code relating to filing of returns and paying required taxes in the five-year period beginning with the first day of the year in which the offer-in-compromise is accepted;

(7) is in compliance with all tax filing and payment requirements for periods not covered in the offer-in-compromise up to and including the year in which the offer-in-compromise is filed;

(8) agrees, in non-final matters, that the Department may proceed with any appropriate collection procedures for the compromise as if the matter were a fixed and final matter;

(9) meets any and all other conditions that the Department may also require as a condition of acceptance of an offer, including:

(i) entering into a signed agreement under which the taxpayer agrees to pay over a fixed percentage of the taxpayer's future earnings or other income for a specific period of time;

(ii) pledging collateral or other security for the duration of any provision of the compromise agreement which allows for periodic payments as permitted under paragraph (2) of subdivision (c) of section 34-06 of these Rules; or

(iii) providing a guarantee of the taxpayer's obligations under the compromise agreement or any collateral agreement;

(iv) anything else deemed necessary given the facts of the case and the taxpayer's circumstances.

(e) *Recommendations to Commissioner of Finance*

(1) Where the offer-in-compromise is based solely on doubt as to collectibility, the Collections Division will recommend in writing acceptance or rejection of the offer-in-compromise.

(i) If the aggregate amount of the liability subject to the offer-in-compromise (including interest, additions to tax and penalties) is less than \$25,000, the Collections Division shall send the offer-in-compromise, together with that Division's recommendation directly to the Commissioner of Finance.

(ii) If the aggregate amount of the liability that is the subject of the offer-in-compromise (including interest, additions to tax and penalties) is \$25,000 or more, the Collections

Division shall submit the offer-in-compromise, together with the Collection Division's recommendation, to the Office of Legal Affairs, which shall review the offer-in-compromise and the Collection Division's recommendation. The Office of Legal Affairs shall give its recommendation as to whether the offer-in-compromise meets the requirements of subdivision (c) of section 34-02 of these rules, and shall submit its written recommendation along with the recommendation of the Collections Division and the offer-in-compromise to the Commissioner of Finance.

(2) Where the offer-in-compromise is based in part on doubt as to collectibility and in part on doubt as to liability, the Collections Division shall prepare its recommendation with respect to doubt as to collectibility. The Collections Division shall then submit its recommendation and the offer-in-compromise to the Office of Legal Affairs. The Office of Legal Affairs will recommend acceptance or rejection of the offer-in-compromise with respect to doubt as to liability. If the aggregate amount of the liability that is the subject of the offer-in-compromise (including interest, additions to tax and penalties) is \$25,000 or more, the Office of Legal Affairs shall also give its recommendation as required under subparagraph (ii) of paragraph (1) of this subdivision. The Office of Legal Affairs shall then submit its written recommendation on doubt as to liability, its written recommendation under subparagraph (ii) of paragraph (1) of this subdivision, if required, the recommendation of the Collections Division on doubt as to collectibility and the offer-in-compromise to the Commissioner of Finance.

(3) In non-final matters where the offer-in-compromise is based solely on doubt as to liability, the Office of Legal Affairs shall submit its written recommendation directly to the Commissioner of Finance.

(4) Oral communications with any officer or employee of the Department regarding an offer-in-compromise will be considered to have minimal probative value and are strongly discouraged. Any recommendation to accept or reject an offer-in-compromise and the decision by the Commissioner of Finance to accept or reject an offer-in-compromise shall be based on the terms of the offer-in-compromise and the documentation and correspondence filed or submitted in support thereof.

(f) Decision of the Commissioner of Finance

(1) Upon the receipt of a recommendation or recommendations submitted pursuant to subdivision (e) of this section, the Commissioner of Finance will accept or reject the offer-in-compromise and will notify the taxpayer of the decision.

(2) In final matters where the amount to be compromised is more than \$100,000, exclusive of civil penalties, interest, or additions to tax or charge, the Commissioner of Finance's acceptance of the offer-in-compromise must be referred to a justice of the Supreme Court for approval, prior to sending notification of acceptance to the taxpayer.

§34-05 Rejection

(a) *Basis.* The following exemplify reasons for rejecting an offer-in-compromise:

(1) failure to meet the statutory requirements (e.g., the taxpayer has not been discharged in bankruptcy or is not insolvent and/or the department can collect more through legal proceedings than the amount being offered);

(2) making a frivolous offer or filing an offer for the purpose of delaying the collection of tax liabilities;

(3) failure to verify financial information, where required;

(4) failure to make full financial disclosure (e.g., not fully disclosing all assets or income);

(5) there is evidence of conveyance of assets for less than fair market value;

(6) public policy considerations;

(7) the taxpayer has not demonstrated a good faith effort to repay/resolve the tax debt (i.e., where the taxpayer has displayed a wanton disregard for the tax debt over an extended period of time and disposed of significant assets and other holdings); or

(8) the tax liability sought to be compromised relates to any crime of which the taxpayer has been convicted.

The causes for rejection of an offer-in-compromise set forth in this subdivision are not all-inclusive nor should any one cause be interpreted as restricting or otherwise limiting the Department's discretion with respect to other causes.

(b) *Effect.*

(1) If an offer-in-compromise is rejected, the taxpayer will be promptly notified in writing. Further, the Department will have the same rights that it would have had with respect to the any liability that was the subject of the offer-in-compromise, including all rights to assess or collect the liability, had the offer-in-compromise not been submitted.

(2) Written notification of the taxpayer of the decision to reject the offer-in-compromise will not constitute a statutory notice. The acceptance or rejection of an offer-in-compromise is within the exclusive authority of the Commissioner of Finance and is not subject to administrative review by the Conciliation Bureau or the Tribunal.

(3) In non-final matters, the filing of the offer-in-compromise constitutes the taxpayer's waiver of the statute of limitations as provided under paragraph (2) of subdivision (c) of

section 34-03 of this chapter, for the period therein provided, which includes the six-month period after the offer-in-compromise has been rejected. Such six-month period shall commence on the date of the Commissioner's written notice of rejection.

§34-06 Acceptance

(a) Notification. The Commissioner of Finance shall notify the taxpayer in writing of the decision to accept the offer-in-compromise. No acceptance of the offer-in-compromise shall be effective until:

(1) the taxpayer has received written notification of acceptance, and

(2) if required, the acceptance of the offer-in-compromise has been approved by a justice of the Supreme Court as provided in paragraph (2) of subdivision (f) of section 34-04 of these Rules.

(b) Compromise Agreement.

(1) The accepted offer-in-compromise shall constitute the compromise agreement between the taxpayer and the Department.

(2) The compromise agreement shall include the conditions for acceptance set forth in subdivision (d) of section 34-04 of these Rules, the compromise amount (i.e. the amount paid or required to be paid under the terms of the compromise agreement), and the terms of payment of the compromise amount.

(3) No liability will be considered compromised, nor any warrant satisfied, until all obligations of the taxpayer under the compromise agreement are performed.

(4) The compromise agreement relates to the entire liability of the taxpayer, including taxes, interest, additions to the tax and penalties, with respect to which the offer-in-compromise is filed.

(5) Neither the taxpayer nor the Department shall be permitted to reopen a matter that is the subject of a compromise agreement for any reason, except as specifically provided in the compromise agreement or upon a showing of the taxpayer's default, fraud, malfeasance or misrepresentation of a material fact.

(c) Payment

(1) Generally, within 60 days of notification of acceptance, the taxpayer must make full payment of the compromise amount.

(2) If a taxpayer can demonstrate the need for periodic payments over a period of time, the Department may grant a reasonable period of time for payment of the compromise

amount not to exceed two years. Where special circumstances are demonstrated, the two-year period may be extended in the discretion of the Commissioner of Finance. In the case of periodic payments, interest will be due at the established underpayment rate compounded daily on any deferred portion of the compromise amount from the date of notification of acceptance until the compromise amount is fully paid.

(d) *Record*

(1) Where the offer-in-compromise is accepted, a record of the offer-in-compromise will be placed on file in the office of the Commissioner of Finance. The record will include the written recommendations of the Collections Division, and/or the Office of Legal Affairs with respect to the offer-in-compromise.

(2) Where the aggregate amount of the liability subject to the offer-in-compromise is \$25,000 or more (including interest, additions to tax and penalties), the record also shall contain a written statement indicating the basis for the decision of the Commissioner of Finance.

(3) The record also shall include a written statement of:

(i) the amount of taxes or charges that are the subject of the offer-in-compromise;

(ii) the amount of interest, additions to tax or penalties imposed on the taxpayer; and

(iii) the compromise amount.

(e) *Default.* Where a taxpayer does not comply with the conditions of the compromise agreement (including any requirements with respect to collateral agreements) or where there is evidence of the taxpayer's fraud, malfeasance or misrepresentation of a material fact subsequent to the acceptance of the offer-in-compromise, the taxpayer shall be in default, and the Department may proceed as follows:

(1) In fixed and final matters, the Department may proceed to collect the full amount of the original liability that was the subject of the offer-in-compromise (including all applicable interest and penalties), less all amounts previously paid to the Department, including any payments of the compromise amount;

(2) In non-final matters, the Department may proceed to docket a warrant for the full amount of the original liability that was the subject of the offer-in-compromise (including all applicable interest and penalties), less all amounts previously paid to the Department, including any payments of the compromise amount, and may proceed to collect that amount as if the matter were a fixed and final matter.

The Department shall give the taxpayer written notice of any action taken under this subdivision.

§34-07 Other Rights and Powers Preserved. Nothing in this chapter of these rules shall be read or construed to limit, diminish or otherwise impair any power the Department may exercise under the City Charter, the Code or any other provision of law, including, but not limited to, any authority the Department has to settle and adjust tax liabilities under paragraphs (a) and (e) of subdivision (2) of section 1504 of the City Charter.

BASIS AND PURPOSE OF RULES

These rules establish procedures implementing the authority granted to the Department of Finance to compromise civil liability for income and nonproperty excise taxes, or warrants or judgments therefor, by new paragraphs c, d and e of subdivision 2 of section 1504 of the New York City Charter enacted by section 23 of Chapter 513 of the Laws of New York of 2002.