

Memorandum in Support

NYSBA #8

May 6, 2011

S. 3945

By: Senator DeFrancisco
Senate Committee: Investigations and
Government Operations
Effective Date: Immediately

AN ACT to amend the tax law, in relation to reforming the offer-in-compromise program.

LAW AND SECTIONS REFERRED TO: Tax Law, Section 171.

THE NEW YORK STATE BAR ASSOCIATION **SUPPORTS THIS LEGISLATION**

This legislation, introduced at the request of the New York State Department of Taxation and Finance, would amend Tax Law §171(fifteenth), the provision which empowers the Commissioner of the New York State Department of Taxation and Finance (“Commissioner”) to administer the New York Offer-in-Compromise Program (“OIC Program”).

Based on the recommendation of the New York State Bar Association’s Tax Section, we endorse S3945 because we believe it will (i) increase State revenue collections, (ii) bring more non-compliant New York State taxpayers back into the tax system and into compliance, (iii) reduce administrative costs for the Department, and (iv) remove from the State’s tax books debts that will never be collected.

Discussion: Once New York State has issued a warrant or obtained a judgment for taxes due to the State, the Commissioner’s authority to negotiate a settlement or compromise with the taxpayer (now a “tax debtor”) disappears. The Commissioner is obligated to pursue collection of the entire amount shown as due in the warrant or judgement. The *only* exception to this is the authority granted to the Commissioner under Tax Law 171(fifteenth). This provision of the law authorizes the Commissioner to enter into Offers-In-Compromise with tax debtors, but that authorization is currently very strictly limited.

The Federal Government also has an offer-in-compromise program; that program is less restrictive than the New York OIC Program, and we believe has been more successful as a result.

S3945 would change the OIC Program in the following ways, all of which we believe would benefit the State.

Currently, to qualify for a compromise offer, a tax debtor must demonstrate that he/she has been discharged in bankruptcy or is insolvent. This requirement eliminates from the OIC Program all tax debtors who are technically “solvent” even though they may have no likelihood of ever paying the tax liability in full. The Federal offer-in-compromise program does not have this restriction. S3945 would allow the Commissioner to accept offers from a broader pool of applicants (by authorizing the Commissioner to accept an offer from any tax debtor who has demonstrated that payment in full will result in undue economic hardship).

Currently, the Commissioner is required to accept no less than the amount that could be recovered through legal proceedings. In calculating this amount, the Commissioner must assume a full exercise of the Department’s levy and garnishment powers over the remainder of the collection period (which can be twenty years or more) even if circumstances render enforcement of the debt impractical, contrary to public policy or unlikely to succeed. S3945 would change this to permit the Commissioner to accept an amount that (a) more accurately reflects the true collection potential of the file or (b) is otherwise justified by a showing that a greater amount would cause undue economic hardship. The Federal program is similar to this. S3945 would add to Tax Law §171(fifteenth), for clarity, that the Commissioner “shall not accept any amount payable in compromise that would undermine compliance” with the Tax Law or “enter into any compromise that would be adverse to the best interests of the State.”

Based on the forgoing, the New York State Bar Association SUPPORTS this legislation.