

## New York Updates: Little Changes Lead To Big Improvements

by Timothy P. Noonan



Regular readers of Noonan's Notes know that I am often not shy about pointing out those instances where my counterparts in the New York State Department of Taxation and Finance have taken actions that I believe to be incorrect or unjustified. I've complained about recent policy changes in the information services area, railed against positions taken against so-called responsible officers for sales tax purposes, and taken issue with myriad positions raised by the tax department in residency cases. But I hope regular readers also know that I try to tell it like it is. And when the government does the right thing, I'm the first person to point that out. OK, maybe I'm not the first person to point it out. Maybe I'm the fourth or fifth. You get the point.

In any event, this is going to be one of those columns. Over the past year, there have been a couple of very positive developments within the tax department that I view as incredibly important to tax practitioners. Though perhaps introduced as minor alterations to policies or procedures, these changes should significantly improve taxpayer relations and help us practitioners solve issues for our clients.

So if you're looking for another one of those articles criticizing actions of state tax departments, turn the page. Or look back in the old archives of Noonan's Notes articles. I'm sure you'll find what you're looking for. For everyone else, pay attention. These changes could significantly help you with problems your clients are facing.

### Online Protests

The tax department has recently made public its efforts to encourage taxpayers to use the online services made available on its website. In an October 7 press release, the department announced that the

number of businesses creating online accounts had tripled in one year. In the press release, Commissioner Thomas Mattox stated that the department would "continue to enhance our online services so that business operators can focus on running and growing their businesses," and that the system should "save New York State and its taxpayers millions of dollars through paperless processing and streamlined administration." The release also notes that online-account users can take care of a variety of tasks online, such as scheduling payments, view account summaries, and respond to tax department notices.

I stumbled on this development by accident. I recently received a late-filing notice for my favorite client: me. Apparently, according to the department's records, I filed my 2010 return a few weeks late, so the notice reflected some minor late-filing penalties. This, of course, was a mistake — I had, in fact, filed my return on time. But I wasn't looking forward to what I expected would be several telephone calls and letters with department personnel to resolve this mistake, a process that I've been through many times on behalf of paying clients. While using the department's website for some other matters, I noticed that I had the ability to create an online account for myself. Once I did so, an "account summary" popped up and, sure enough, that pesky penalty notice was there. But there was also an option to respond to the notice. I clicked on it, filled out an online form, explained the situation, and then went about the rest of my day. Two days later, I received a call from a tax department representative with the good news: The situation was resolved, penalties were abated, and I was entitled to attorney's fees for the trouble. OK, I made that last part up. But I was more than pleasantly surprised at how effective the system was. A response in two days?

Suspicious about such efficiency, I tried it again, this time for a paying client. Again I had a situation in which penalties were assessed, this time for late payment of tax arising after returns were amended because of federal audit changes. This is a situation in which penalties should normally be abated, but I have found in the past that it's sometimes difficult to

resolve these issues quickly over the phone. So I tried out the online system. And again, it worked. Within a few days, the issue was resolved.

Curious, I followed up directly with Peggy Sherman, deputy commissioner for processing and taxpayer services. Sherman confirmed that the department is putting a priority on these types of protests, and that my experience with response times is actually pretty standard, at least for protests involving less complex issues. I'm also not the only one using the system. Since January, about 30,000 protests have been filed by taxpayers, according to Sherman, and the department believes that number will only grow; there are already over 1 million account holders on the system.

This isn't the type of development that's going to drastically change the lives of everyday tax practitioners. But it's going to make some days a lot easier. It's a nice little development that everyone should be aware of.

### 20-Year Statute of Limitations

This change may have received a little more fanfare. The Tax Law was recently amended to revise the 20-year limitation on the tax department's time to collect on old tax liabilities.<sup>1</sup> The prior law was governed by the Civil Practice Law and Rules and presumed that a liability was satisfied after the expiration of 20 years from the date the department was first entitled to enforce it. But there were several practical problems with that system. First, the 20-year statutory period did not begin to run until a warrant was *actually* filed. So if the department waited six years to file the warrant, the statute would obviously be much longer than 20 years. The bigger problem, though, was that the statute of limitations seemed to regenerate constantly. If a taxpayer made a payment toward the liability, the statute started over. If the taxpayer merely acknowledged the liability in writing, the statute started over! As a result, there really was no statute of limitations at all. Taxpayers could be stuck with liabilities 30, 40, or even 50 years old.

**Under the old law, there really was no statute of limitations. Taxpayers could be stuck with liabilities 30, 40, or even 50 years old.**

The new law is geared toward correcting those problems. Under the new law, all tax liabilities will be extinguished after 20 years from the first date a warrant *could* have been filed by the tax depart-

ment. For these purposes, the date a warrant could first be filed is either: (1) the day after the last day for payment as specified on the notice and demand or (2) the day after the opportunity to apply for a hearing or review has been exhausted, if there is a right to a hearing regarding the notice and demand. Thus, in a normal situation, a warrant "could be filed" fairly early in the collection process, sometimes as early as a few months after a return is filed or a liability is assessed. In other words, the 20-year clock starts ticking almost right away. Also, the regeneration rules have been extinguished. So making payments or acknowledging a liability doesn't extend or revive the statute.

Thus, we now have a real 20-year statute of limitations that taxpayers can count on. This new law became effective August 17, but it is essentially retroactive, because it applies "to all tax liabilities that could have been warranted before August 17, 2011."<sup>2</sup> We understand that the department is already purging those old liabilities that now fall outside the scope of the new 20-year statute of limitations.

This is a good development for both sides of the table. Obviously, it benefits taxpayers, because all statutes of limitations provide for a certain level of fairness and certainty. But even on the tax department side, there are benefits. For instance, over the years as the department has sought to collect on really old tax liabilities, we've had lots of success eliminating these assessments based on the department's inability to prove the existence of valid assessments. In some cases, we've obtained refunds for clients who have paid on liabilities that the department is unable to prove ever even existed. This law change could keep them out of such sticky situations in the future.

### Offers in Compromise

The tax law was also recently amended to expand the scope of the department's Offer in Compromise program.<sup>3</sup> The OIC program was designed to allow financially distressed taxpayers to put their tax liabilities behind them by offering to pay a reasonable amount of that liability in compromise. However, the system was pretty clunky. Under the prior law, taxpayers were eligible to participate in an OIC only if they were unable to pay a fixed tax liability because the taxpayer had been discharged in bankruptcy or proven to be insolvent. Also, any amount accepted in compromise could not be less than what was recoverable through legal proceedings. We often found that many clients who should have been

<sup>1</sup>Tax Law section 174-b.

<sup>2</sup>TSB-M-11(15)S.

<sup>3</sup>Tax Law sections 171(15) and (18-a); TSB-M-11(9)I.

eligible for relief under that program couldn't quite fit into the program because of its strict requirements.

The new law became effective August 17, and it modernizes the OIC program in an attempt to align the program with the public policy goals for which it was created. Under the new law, taxpayers will also be permitted to participate in OIC on the basis of undue economic hardship. Taxpayers who can prove that full collection of the liability would cause undue economic hardship will be allowed to pay an amount in compromise that reasonably reflects collection potential or is otherwise justified by proof offered by the taxpayer (if the amount would not undermine compliance with the taxes or other impositions of the state). The new law does not define undue economic hardship, but it does require the commissioner to promulgate regulations to that effect. The tax department is developing those regulations, and drafts of the new regulations are already circulating. However, in what easily now qualifies as one of my

favorite statements in the tax law, the Legislature makes sure to point out that the inability to "maintain an affluent or luxurious lifestyle" does *not* constitute undue economic hardship. Really, guys? Thanks for making that clear.

### Conclusion

As noted above, none of these changes are earth-shattering, but I think they all will help practitioners in their day-to-day practice. And the changes also send a nice message about the tax department's willingness to create programs and procedures to help taxpayers through the difficult and sometimes painful process of paying their taxes or resolving tax disputes. ☆

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