DOF Business Collection Alternative (BCA)

FEBRUARY 26, 2019

OFFICE OF THE TAXPAYER ADVOCATE

OBJECTIVE

Delivering NYC Department of Finance's collection process by:
- creating a customer-focused initiative
- ensuring the business model of the current process is reviewed and modified
- improving the overall customer experience

NYC Finance is in the process of transitioning to a new system to improve customer service and efficiency.

AREAS OF FOCUS

- Tax Warrants / Liens
- Offers in Compromise
- BCA Breakdown
  - Current BCA Status
  - Limitations of Statute
  - Comparable Models
  - Recommendations
- Statute of Limitations
- Collection

PAYMENT PLANS

PENALTIES
- First Time Abatement
- Renewal of Credit Assessment

BCA Breakdown

- Collection
- Statute of Limitations
- Offers in Compromise
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OFFICE OF THE TAXPAYER ADVOCATE

OBJEKTIVE
Refine NYC Department of Finance's collection process by:
- creating collection alternatives
- easing the burden on Small Business owners experiencing hardships paying New York City business taxes

Note: Focus on small business taxpayers with seven businesses that are fixed and final, and not in dispute. DFO already has a system in place to dispute liabilities.

AREAS OF FOCUS

BCA Breakdown
- Current DOF Status
- Limitations of Status
- Comparable Models
- Recommendations

PAYMENT PLANS

PENALTIES
- First-Time Abatements
- Reasonable Cause Abatements

Collection Statute of Limitations
Offers in Compromise
- Tax Warrants / Liens
OBJECTIVE

Reform NYC Department of Finance’s collection process by:
- creating collection alternatives
- easing the burden on (small) business owners experiencing hardships paying New York City business taxes

Note: Focus is on business taxpayers with account balances that are fixed and final, and/or not in dispute. DOF already has a system in place to dispute liabilities.

AREAS OF FOCUS

- Payment Plans
- First-Time Abatement of Penalties
- Reasonable Cause Abatements
- NYC Collections on Statute of Limitations
- Offers in Compromise
- Warrants/Liens
BCA Breakdown

- Current DOF Status
- Limitations of Status
- Comparable Models
- Recommendations

Reasonable Care Analysis

First-Time Analysis

PENA

Reasonable Cause Analysis
Payment Plans: Currently

- Who’s eligible?
  - Business taxpayers in compliance with their tax returns
  - Minimum $500 debt
- DOF discretionary criteria:

<table>
<thead>
<tr>
<th>Balance</th>
<th>Installment term</th>
<th>Down Payment</th>
</tr>
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<tbody>
<tr>
<td>$500–$999</td>
<td>2–6 months</td>
<td>25%</td>
</tr>
<tr>
<td>$1,000–$24,999</td>
<td>6–12 months</td>
<td>15%–25%</td>
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- Longer terms must be approved by management.
  (Administratively created --> discretionary)
Payment Plans: Limitations

- Not enough flexibility for taxpayers with hardships

- Taxpayers must pay present taxes concurrently; possibility of default
  
  - E.g., a 15% down payment on a $50,000 debt is $7,500, and >$2,360/month plus interest for 18 months....in addition to current liabilities.

- Discretionary nature of program may create inequities among taxpayers
OTHER MODELS

Other Models: IRS – Currently Not Collectible
- Taxpayer submits Collection Information Statement (CIS), usually Form IRC 433-D, signed under penalty of perjury.
- (Note: Proprietors, general partnerships, LLCs use IRS 433-D)
- In liquidation,
- Business Information
- Business Property and Contacts
- Other Financial Information
- Business Asset & Liability Information
- Monthly Income Expense Statement
- Some IRS office guidelines to process CNC not published for public.

Other Models: IRS – CNC - Procedures (cont.)
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Other Models: IRS – Installment Agreements
- IRS willingly enters installment agreements with a taxpayer if IRS is granted control of any liability
- Business and individuals are required to submit a CIS
- Taxpayers required to comply with current tax payment and filing requirements
- Penalties and interest continue to accrue

Other Models: San Jose (Prospective Taxes)
- Low Income Generating Small Businesses
- Small businesses owned by low income residents
- Officers or employees may be Chief Financial Officer or President
- Officers may be authorized to sign
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Other Models: Small Business with Limited Household Income
- Small businesses owned by low income residents
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Other Models: New York State IPA
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Other Models: IRS – Currently Not Collectible

- “Currently not collectible” (CNC) status when taxpayer “has no assets or income which are, by law, subject to levy.” For example:
  - Business liquidated in bankruptcy
  - Business inactive/defunct with no assets
  - Business current, but unable to pay back taxes

- Taxpayers with limited assets where a levy action would create a hardship (not meet basic living expenses) also CNC [sole proprietors, single-member LLCs, certain partnerships only].

- Cases removed from active inventory.
Other Models: IRS – CNC – Procedures (cont.)

- Taxpayer submits Collection Information Statement (CIS), usually Form 433-B, signed under penalty of perjury
  - (Sole proprietors, certain partnerships, LLCs use 433-A)
- Includes:
  - Business Information
  - Business Personnel and Contacts
  - Other Financial Information
  - Business Asset & Liability Information
  - Monthly Income/Expense Statement
- Note: IRS dollar guidelines to process CNC not publicly available
Other Models: IRS – CNC – Procedures (cont.)

- Notice of **Federal Tax Lien (NFTL)** filed if balance >$10,000
- Business must demonstrate ability to remain current
  - Not remaining current will reactivate collection
- IRS will **monitor business** after declaring CNC to ensure compliance or see if it becomes collectible again
  - Follow-up **times vary and are not explicitly specified in IRM** (in practice, usually between **1-3 years**)
- **Note:** IRS has 10-year Collections Statute of Limitations, meaning liability could be extinguished
Other Models: IRS - Installment Agreements

- IRS may enter into installment agreements with a taxpayer for full or partial collection of any liability

- Balances >$50,000 are required to submit a CIS

- Taxpayers are required to comply with current tax payment and filing requirements

- Penalties and interest continue to accrue
Other Models: IRS – Streamlined Installment

- Businesses qualify for aggregate unpaid balance of assessment is $25,000 or less (income tax only)
  - Out of business sole proprietors may qualify if the unpaid balance is up to $50,000
- No managerial approval required
- No CIS required
- Taxpayers must be current with filing requirements
- Taxpayers who defaulted/missed payments on an installment agreement in the past year may qualify by filing a CIS or IRS computing ability to pay up to 72 months
Other Models: IRS – Guaranteed Installment

If Taxpayers:
- owe income of $10,000 or less (excluding penalties and interest)
- are current in filing requirements and payments for past five years
- agree to fully pay within 3 years
- have not entered into an installment agreement in the past five years

***IRS must accept taxpayer’s installment proposal.
Other Models: New York State IPA

- NYSDTF offers Installment Payment Agreements (IPA) to businesses on case-by-case basis, for income, sales, and employment taxes.

- Business: 20% down payment (but NYS may use its discretion); length of agreement not publicly disclosed.

- Sole proprietors/single-member LLCs apply as individuals through Online Services account or via telephone:
  - **Streamlined**: Balances of up to $20,000, up to 36 months or until CSED expires (if sooner)
  - **3-6 Year Payment Plan**: For larger debts requiring more time, taxpayer submits Form DTF-5, Statement of Financial Condition. Possible lien.
Other Models: San Jose (Prospective Taxes)

Low Revenue Generating Small Business
- Small Business Owners (owned by one person or operated jointly by spouses/domestic partners; no employees)
- Gross receipts US Dep’t HHS guidelines for a single person x2 ($24,280 in 2018)

Small Business With Limited Household Incomes
- Small Business Owners (owned by one person or operated jointly by spouses/domestic partners; no employees)
- AGI of owner + spouse/domestic partner US Dep’t HHS guidelines for a single person x4 ($48,560 in 2018)

Taxpayers who file an exemption request before the date that year’s taxes are due receive full exemption from upcoming year’s taxes
Policy Considerations & Proposal

- Current DOF installments too rigid; even the most generous plans do not account for hardship (e.g., economic downturn, illness)
- For taxpayers experiencing a temporary hardship, premature installment agreements could impact future profits.
- Taxpayers should not be forced to shut down their small business based on back tax debts if they wish to, in good faith, pay them back.
- Debt should matter so far as it impacts income.
Proposal: At a Glance

- More flexible **tiered installment** agreements for General Corporation (GCT), Business Corporation (BCT), Unincorporated Business Taxpayers (UBT)
  - “Guaranteed” installment agreements
  - “Streamlined” installment agreements
  - Negotiated agreements

- **Income-based repayment** agreements for UBT
  - Including temporary deferral of collection (using benchmarks from San Jose model)
Proposal: Guaranteed Installment

- Taxes owed $10,000 or less (excluding penalties and interest)
- Taxpayers current in all filing requirements
- Down payment of first month’s installment; taxpayers agree to fully pay within 36 months
  - BUT: payments must be more than interest accruing
- Taxpayers have not entered into (or defaulted on) an installment agreement in the past five years
- Examples for comparison

<table>
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<tr>
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<td>$900</td>
<td>25% down, 6 months $225 down, $112.50/mo</td>
<td>Installment down, 36 months $25 down, $25/mo</td>
</tr>
<tr>
<td>$10,000</td>
<td>15% down, 12 months $1,500 down, $708.33/mo</td>
<td>Installment down, 36 months $277.78 down, $277.78/mo</td>
</tr>
<tr>
<td>$10,000</td>
<td>25% down, 12 months $2,500 down, $625/mo</td>
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Proposal: Streamlined Installment

- Unpaid balance >$10,000 - $50,000
- Did not default on a previous installment agreement in the past five years
- No CIS required
- Taxpayers must be current with filing requirements
- Up to 72 months; down payment is first installment
  - Payments must be more than interest accruing
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*Excluding calculations of accrued interest, which are subject to change and will increase payment amounts.
- Payments must be more than interest accruing

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<td>25% down, 18 months $12,500 down, $2,083.33/mo</td>
<td>Installment down, 72 months $694.44 down, $694.44/mo</td>
</tr>
</tbody>
</table>

*Excluding calculations of accrued interest, which are subject to change and will increase payment amounts.*
Proposal: Negotiated Agreement

- Unpaid balances above $50,000, or taxpayers who defaulted in the past five years
- CIS required
- Taxpayers must be current with filing requirements
- Taxpayers who defaulted/missed payments on an installment agreement in the past year may qualify by filing a CIS or IRS computing ability to pay
- Up to 72 months, unless CIS shows need for longer term.
Proposal: Income-Based Repayment (IBR) for UBT
Current vs Proposed

Current

Proposed (IBR)

<table>
<thead>
<tr>
<th>Balance</th>
<th>Installment term</th>
<th>Down Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>$500-$999</td>
<td>2-6 months</td>
<td>25%</td>
</tr>
<tr>
<td>$1,000-$24,999</td>
<td>6-12 months</td>
<td>15%-25%</td>
</tr>
<tr>
<td>$25,000-$99,999</td>
<td>12-18 months</td>
<td>15%-25%</td>
</tr>
<tr>
<td>&gt;$100,000</td>
<td>18-24 months</td>
<td>15%-25%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Income</th>
<th>Installment Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current gross receipts ≤ $24,280 or AGI ≤ 48,560</td>
<td>Defer payment for 1 year</td>
</tr>
<tr>
<td>Current gross receipts ≤ $93,000</td>
<td>Submit CIS with temporary payment plan based on payment ability (debt to income and assets); reevaluate annually</td>
</tr>
<tr>
<td>Balance</td>
<td>Installment term</td>
</tr>
<tr>
<td>------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>$500-$999</td>
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<tr>
<td>$100,000</td>
<td>18-24 months</td>
</tr>
<tr>
<td>Income</td>
<td>Installment Agreement</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>------------------------------------------------------------</td>
</tr>
<tr>
<td>Current gross receipts $\leq$ 24,280 or AGI $\leq$ 48,560</td>
<td>Defer payment for 1 year</td>
</tr>
<tr>
<td>Current gross receipts $\leq$ 95,000</td>
<td>Submit CIS with temporary payment plan based on payment ability (debt to income and assets); reevaluate annually</td>
</tr>
</tbody>
</table>
IBR - Other Requirements (cont.)

• Taxpayer must show **good-faith effort to be compliant** (i.e., all past returns must be filed)
• Any **estimated payments** must be made or accounted for
• **No current criminal investigation**
• **Debts must be fixed and final** (though debts currently under audit at the time of the agreement could be rolled in upon becoming fixed and final)
• Taxpayer must **submit CIS** (to filter for taxpayers who also earn unrelated wages or affluent household members)
PENALTIES

First-Time Abatements

Other Models

IRS – First-Time Abate

- Record the RIC and Tax Identification
- Make the proper payment
- Record the payment in the proper manner
- Notify the proper authority

- Registration
- Application
- Payment
- Tax

- Registration and tax
- Payment
- Tax

Note: This is a requirement that should be used in what order it is presented in; if a penalty is paid for
another reason, payment should be documented.
First-Time Abatements: Currently

Statement of the Law

Unlike the federal standard, New York City does not have a free-standing first time penalty abatement for business taxes.

In New York City, reasonable cause abatement must be identified pursuant to the applicable tax and its section (see NYC Admin. Code secs. 11-525 [UBT], 11-676 [GCT/BCT], and 11-715 [CRT]).
Limitations

Limitations of No DOF First-Time Abatement

- Reasonable cause is not clearly defined, and DOF guidance as to which situations meet this standard is limited, which results in discretionary determinations.

- **Underlying tax debt (plus interest) remains**, so taxpayers who cannot pay underlying debt are not helped as much.

- **Certain penalties** (e.g. underpayment of estimated quarterly installments) cannot be abated due to reasonable cause (see NYC Admin. Code secs. 11-676(3)-(4), 11-525(c)-(d))
Other Models
IRS – First-Time Abate

- Under the IRS’s First-Time Abatement (FTA) waiver is an administrative alternative to abate penalties if reasonable cause criteria cannot be met.
- Available for failure to file, failure to pay, or failure to deposit employment penalties. See IRM 20.1.1.3.3.2.1 (Nov. 21, 2017)
- Criteria for the Federal FTA
  - No penalties issued in past 3 years
  - Taxpayer has filed all returns currently due:
  - Taxpayer has paid (or arranged to pay) any tax currently due.

Note: FTA is a one-time remedy that should be used as a last resort; if a penalty can be abated for another reason (reasonable cause, mathematical errors, etc.), that should be advocated for instead.
Claim for Refund and Request for Abatement

Use Form 843 if your claim or request involves:

(a) a refund of one of the taxes (other than income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding) or a fee, shown on line 3,
(b) an abatement of FUTA tax or certain excise taxes, or
(c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

Do not use Form 843 if your claim or request involves:

(a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),
(b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
(c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Name(s) | Your social security number
---|---
Address (number, street, and room or suite no.) | Spouse's social security number
City or town, state, and ZIP code | Employer identification number (EIN)
Name and address shown on return if different from above | Daytime telephone number

1 **Period.** Prepare a separate Form 843 for each tax period or fee year.
   From _____________________ to _____________________
   2 **Amount to be refunded or abated:** $_____

3 **Type of tax or fee.** Indicate the type of tax or fee to be refunded or abated or to which the interest, penalty, or addition to tax is related.
   - [ ] Employment
   - [ ] Estate
   - [ ] Gift
   - [ ] Excise
   - [ ] Income
   - [ ] Fee

4 **Type of penalty.** If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section:
   a **Interest, penalties, and additions to tax.** Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.)
      - [ ] Interest was assessed as a result of IRS errors or delays.
      - [ ] A penalty or addition to tax was the result of erroneous written advice from the IRS.
      - [ ] Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.
      b Date(s) of payment(s)______________________________________________________________________________

5 **Original return.** Indicate the type of fee or return, if any, filed to which the tax, interest, penalty, or addition to tax relates.
   - [ ] 706
   - [ ] 709
   - [ ] 940
   - [ ] 941
   - [ ] 943
   - [ ] 945
   - [ ] 990-PF
   - [ ] 1040
   - [ ] 1120
   - [ ] 4720
   - [ ] Other (specify)______________________________________________________________________________

6 **Explanation.** Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.
________________________________________________________________________________________________________________________________________________________
________________________________________________________________________________________________________________________________________________________
________________________________________________________________________________________________________________________________________________________

**Signature.** If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Signature (Title, if applicable. Claims by corporations must be signed by an officer.) Date
________________________________________________________________________________________________________________________________________________________

Signature (spouse, if joint return) Date
________________________________________________________________________________________________________________________________________________________

**Paid Preparer Use Only**
Print/Type preparer’s name Date Prepared
Preparer’s signature
________________________________________________________________________________________________________________________________________________________
________________________________________________________________________________________________________________________________________________________

Firm’s name
________________________________________________________________________________________________________________________________________________________
Firm’s address
________________________________________________________________________________________________________________________________________________________
Firm’s EIN
________________________________________________________________________________________________________________________________________________________
Phone no.
________________________________________________________________________________________________________________________________________________________

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.
Cat. No. 10110R Form 843 (Rev. 8-2011)
Penalties issued in past 5 years
payers has filed all returns currently due:
payer has paid (or arranged to pay) any tax currently due.

Note: FTA is a one-time remedy that should be used
as a last resort; if a penalty can be abated for
another reason (reasonable cause, mathematical
errors, etc.), that should be advocated for instead.
Recommendation:
First-Time Abatement

- DOF should add a First-Time Abatement (FTA) option for penalties. As FTA is an administrative waiver, it can be instituted via simple policy change.

- “Reasonable cause,” however lenient, is not a catch-all. Taxpayers who request abatement for reasonable cause more than once are at a disadvantage. Also, certain penalties do not qualify for reasonable cause abatement.

- Rewards compliance history without paying attention to current compliance.
Reasonable Cause Abatement: Currently

DOF can abate many penalties—including Failure to File, Late Filing, and Late Payment—if shown taxpayer’s failure to comply was due to reasonable cause and not willful neglect.

“Reasonable cause” is rarely defined; in practice (since 2015), DOF has used a flexible, discretionary standard to determine whether Taxpayer has shown reasonable cause.
Reasonable Cause Abatement: Currently (cont.)

Defined examples of “reasonable cause”:

• Failure to electronically file: “[R]easonable cause shall include... a taxpayer’s election not to electronically file the authorized tax document.” (NYC Admin. Code sec. 11-132(e)(1))

• Real Property Transfer Tax: ”Reasonable cause ... must be affirmatively shown in a written statement. Grounds for reasonable cause, where clearly established, may include the following:
  • inability to obtain and assemble essential information required for the preparation of a complete return despite reasonable efforts;
  • any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes. Ignorance of the law, however, will not be considered reasonable cause.” (19 RCNY sec. 23-13(b)(5))
Reasonable Cause Abatement: Currently (cont.)

CRT, Hotel Room Occupancy Tax, UBT: “Reasonable cause ... must be affirmatively shown in a written statement. The taxpayer's previous compliance record may be taken into account. Grounds for reasonable cause, where clearly established, may include the following:

- death or serious illness of [the responsible officer or employee of] the taxpayer, or his unavoidable absence from his usual place of business;
- destruction of the taxpayer's place of business or business records by fire or other casualty;
- inability to obtain and assemble essential information required for the preparation of a complete return despite reasonable efforts;
- any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes. Past performance should be taken into account. Ignorance of the law, however, will not be considered reasonable cause.”

- (19 RCNY secs. 7-17(h)(5), 12-12(a)(5), 28-21(b)(5))

*Language not in UBT reg.*
CRT, Hotel Room Occupancy Tax, UBT: “Reasonable cause ... must be affirmatively shown in a written statement. The taxpayer's previous compliance record may be taken into account. Grounds for reasonable cause, where clearly established, may include the following:

- **death** or serious illness of [the responsible officer or employee of]* the taxpayer, or his unavoidable absence from his usual place of business;
- **destruction** of the taxpayer's place of business or **business records** by fire or other casualty;
- **inability** to obtain and assemble **essential information** required for the preparation of a complete return despite reasonable efforts;
- any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an **absence of gross negligence** or **willful intent to disobey** the taxing statutes. Past performance should be taken into account. Ignorance of the law, however, will not be considered reasonable cause.”

- (19 RCNY secs. 7-17(b)(5), 12-12(a)(5), 28-21(b)(5))

*Language not in UBT reg.*
Reasonable Cause Abatement: Limitations

- Underlying tax debt (plus interest) remains, so taxpayers who cannot pay underlying debt are not helped as much.
- Certain penalties (e.g., underpayment of estimated quarterly installments) cannot be abated due to reasonable cause (see NYC Admin. Code secs. 11-676(3),(4); 11-525(c),(d))
- Taxpayers request reasonable cause abatement via written statement; no publicized process or standardized form to request abatement
  - Without guidelines, unclear what taxpayer should include in statement to receive reasonable cause
Reasonable Cause Abatement: IRS Model

“Reasonable cause is based on all the facts and circumstances in each situation and allows the IRS to provide relief from a penalty that would otherwise apply. Reasonable cause relief is generally granted when the taxpayer exercised ordinary business care and prudence in determining his or her tax obligations but was nevertheless unable to comply with those obligations.”

IRM 20.1.1.3.2(1) (November 21, 2017)

- Taxpayers may request Reasonable Cause abatement in writing or via Form 843. Detailed instructions state where the form should be filed.
Reasonable Cause Abatement: IRS Model (cont.)

“Taxpayers have reasonable cause when their conduct justifies the non-assertion or abatement of a penalty. Each case must be judged individually based on the facts and circumstances at hand. Consider the following:"

- What happened and when did it happen?
- During the period of time the taxpayer was non-compliant, what facts and circumstances prevented the taxpayer from filing a return, paying a tax, and/or otherwise complying with the law?
- How did the facts and circumstances result in the taxpayer not complying?
- How did the taxpayer handle the remainder of his or her affairs during this time?
- Once the facts and circumstances changed, what attempt did the taxpayer make to comply?

Reasonable cause does not exist if, after the facts and circumstances that explain the taxpayer’s noncompliant behavior cease to exist, the taxpayer fails to comply with the tax obligation within a reasonable period of time.”
Reasonable Cause Abatement: IRS Model (cont.)

IRM subsections further explaining Reasonable Cause:

- Ordinary Business Care and Prudence (IRM 20.1.1.3.2.2)
- Death, Serious Illness, or Unavoidable Absence (IRM 20.1.1.3.2.2.1)
- Fire, Casualty, Natural Disaster, or Other Disturbance-Reasonable Cause (IRM 20.1.1.3.2.2.2)
- Unable to Obtain Records (IRM 20.1.1.3.2.2.3)
- Mistake Was Made (IRM 20.1.1.3.2.2.4)
- Erroneous Advice or Reliance (IRM 20.1.1.3.2.2.5)
- Ignorance of the Law (IRM 20.1.1.3.2.2.6)
- Forgetfulness (IRM 20.1.1.3.2.2.7)
Reasonable Cause Abatement: IRS Model (cont.)

Treasury Regulations are devoted to Reasonable Cause:

- Treas. Reg. 1.6664-4 Accuracy-Related Penalties (IRM 20.1.5)
- Treas. Reg. 301.6651-1(c) Failure to File a Tax Return and/or Failure to Pay tax Penalties (IRM 20.1.2)
- Treas. Reg. 301.6724-1 Information Returns Penalties (IRM 20.1.7)
- Treas. Reg. 1.6694-2(e)(1)-(6) Tax Return Preparer Penalties (see IRM 20.1.6)
- Treas. Reg. 301.6707-1(e)(3) Material Advisor Penalties (IRM 20.1.12)
Reasonable Cause Abatement: Recommendations

- Provide a more detailed explanation of Reasonable Cause easily accessible to the taxpayers, similar to the IRS.
  - Expand definition for DIT, CRT, Hotel Tax to all taxes (e.g., death or serious illness, fire or other casualty, inability to obtain essential information, “any other cause” that shows ordinary prudence and intelligence absent gross negligence or willful intent)
- Include guidelines to request Reasonable Cause in proposed Internal Finance Manual (currently being drafted)
- Accessible information regarding where to request a Reasonable Cause Abatement
- Draft standard form to request Reasonable Cause Abatement
Collection Statute of Limitations
Collection Statute of Limitations: Currently

Although the DOF has an **assessment statute of limitations of three years** (see NYC Admin. Code 11-523(a), 11-674(1)), and makes reference to “suspension” of a period of limitation on collection (see NYC Admin. Code 11-523, 11-674(5)) or removal of a lien (11-683(10)(c)), it has **no statute of limitations on collection**.

This means that **debts will remain on taxpayer’s account perpetually and can be collected at any time**.
Limitations from Lack of Collection Statute

Problems

Harm to the taxpayer
Statutes of limitation are designed to protect individuals from having to protect themselves against charges when the basics facts may become obscured by the passage of time and to minimize the danger of official confiscation of property for acts in the far distant past.

Harm to the Taxing Authority
The taxing authority is harmed since debts to it remain on its books that it will never collect, and the severity of insisting on stale debts that often have more interest than principle liability discourages taxpayer compliance.
Collection Statute: Other Models

IRS
Under Internal Revenue Code sec. 6502, collection activity must begin within ten years after the date of assessment. The ten-year period may be extended in certain situations or by agreement between the parties.

NY State
Under NY State Tax Law sec. 174-B, a tax liability shall not be enforceable and every tax liability shall be extinguished after twenty years from the first date a warrant could be filed by the commissioner.
Collection Statute: Other Models

**IRS**
Under Internal Revenue Code sec. 6502, collection activity must begin within ten years after the date of assessment. The ten-year period may be extended in certain situations or by agreement between the parties.

**NY State**
Under NY State Tax Law sec. 174-B, a tax liability shall not be enforceable and every tax liability shall be extinguished after twenty years from the first date a warrant could be filed by the commissioner.
Proposed DOF Collection Statute of Limitations

DOF should enact a **20-year collection statute of limitations**, with language similar to that of **NYS** (see NY Tax Law sec. 174-b).

Note: NY Admin Code is **silent** on collection statutes of limitations for most business taxes (e.g. **UBT, CRT**). However, because Charter mandates that the DOF cannot compromise a debt for less than “recoverable through legal proceedings,” it will **require City Council legislation**, rather than administrative policy change.
Offers in Compromise
Offer In Compromise: Currently

Taxpayer can compromise debt owed by proving doubt as to collectibility:
- Business must be either insolvent (liabilities exceed fair market value of assets) or discharged in bankruptcy
- Amount compromised cannot be less than what DOF could collect through legal proceedings

NYC Charter 1504(2)(c); 19 RCNY sec. 34-01 et seq.
Offer In Compromise: Limitations

- **DOF rarely is able to grant OICs!**
- “Hardship or any other issues that does not have a direct bearing on [DOF]’s legal ability to collect from the taxpayer cannot be considered in assessing doubt as to collectibility.” 19 RCNY 34-02(c)
- **DOF has no Collections Statute of Limitations** (i.e., taxpayer could become collectible at any time), and “taxpayer” includes any person “primarily and secondarily liable for the debt.”
- **DOF’s guidelines for OIC are more stringent than New York State**, which requires that a business be insolvent or in bankruptcy only, and allows individuals to apply with hardships.
- However, the **OIC forms used by NYC are identical to those used in New York State**, leaving taxpayer confused.

Ex. Insolvent LLC tried to compromise >$100,000 debt for $10,000. LLC’s net equity was -$2.3M ($1.9M in assets, $4.2M liabilities). Offer rejected because LLC’s assets were greater than amount offered, & DOF could collect more in legal proceedings.
DOF’s guidelines for OIC are more stringent than New York State, which requires that a business be insolvent or in bankruptcy only, and allows individuals to apply with hardship. However, the OIC forms used by NYC are identical to those used in New York State, leaving the taxpayer confused.

Ex. Insolvent LLC tried to compromise >$100,000 debt for $10,000. LLC’s net equity was -$2.3M ($1.9M in assets, $4.2M liabilities). Offer rejected because LLC’s assets were greater than amount offered, & DOF could collect more in legal proceedings.
OIC Other Models: New York State

New York State changed its OIC provisions in 2011:

- Individual taxpayers can apply for OIC if they prove collection in full will cause "undue economic hardship" (defined in 20 NYCRR sec. 5005.1(b)(3))
- Business taxpayers need only to be discharged in bankruptcy or be insolvent
- No OIC if adverse to the interests of the State
- Amount payable must reasonably reflect collection potential or is otherwise justified by proofs offered by taxpayer
- Approval by State Court justice if fixed and final amount compromised more than $100,000
OIC Other Models: Chicago

- Chicago Department of Finance shall “consider written applications for abatement of tax liabilities ..., including related interest and penalties, in cases involving a demonstrated uncertainty as to collectability of the assessment within a reasonable period of time,” if the taxpayer has made good faith efforts to comply.
- All recommendations are within “sole discretion” of the comptroller (after review of a Financial Hardship Committee), but must be approved by corporation counsel.
- Applicant submits a collection statement similar to 433-B.

Chicago Municipal Code, 3-4-153.
Offer in Compromise: Proposal

- DOF would have to change the NYC Charter to overcome the stringent OIC requirements (see NYC Charter 1504(2)(1)). However, the exclusion of “hardship or any other issue that does not have a direct bearing on [DOF’s] legal ability to collect from the taxpayer” from assessing collectability is Regulation-based.
- Unlike GCT/BCT taxpayers, some UBT taxpayers’ personal assets are not protected from collection.
  - Allow taxpayers paying UBT to apply for OIC using the “undue economic hardship” definition of NYS.
- Create separate form from NYS with clearly stated DOF criteria to process DOF OICs.
Tax Warrants / Liens

Tax Warrants/Liens: Limitations
- Tax proof to issue warrant after notice and demand has been made with time allowed for claim
- Taxing warrants later removing lien due to claims or payment
- Lien on real estate can offset mortgage debt

Tax Warrants/Liens: Proposal
- Issue after the notice and demand process
- Alternatively, post the lien notice by different methods to allow for mailing delays
- Consider filing for tracing warrants/lien to avoid offset
- Avoid delays for tax warrants/lien to avoid later issues
- Ensure proper documentation is completed within deadlines
Tax Warrants/Liens: Current

- Assessment and demand for payment does not give rise to a lien automatically. The tax warrant must be docketed by the county clerk.
  - No additional fees are associated with DOF employee executing the warrant, but taxpayer must receive notice.
  - If lien is released, it must be recorded.
- DOF may issue warrant 10 days after notice and demand for payment sent, up to six years after assessment date.
- DOF may issue tax warrants or liens for business debts of $25.00 or more.
  - Furthermore, DOF may issue tax bill for amounts >$5.00.
Tax Warrants/Liens: Limitations

- Time period to issue warrant after notice and demand does not leave taxpayer ample time to respond (or allow for mailing delays)
- Issuing warrants (and releasing them) for small debts wastes time and resources beyond amount of debt
- Liens on small debts can affect taxpayer's credit
Tax Warrants/Liens:
IRS MODEL

- IRS liens issued for business tax balances of $10,000 or more
- Liens are not issued until all IRS notices have been sent to taxpayer
  - Exception: IRS can file lien for less to protect its interests (e.g. pending bankruptcy)

- IRS need not file lien (discretionary) for up to $25,000 if taxpayer enters installment agreement, or up to $50,000 if agreement is via direct debit (IRS.gov)
Tax Warrants/Liens:
New York State

- NYS issues a Notice and Demand for payment “as soon as practicable,” and if the balance is not paid, may issue a warrant between 21 calendar days (or 10 business days, if >$100,000) after nonpayment and six years after assessment.
  - Jeopardy assessments may be made sooner.
  - Warrants are filed with county clerk

- NY Tax Law secs. 692 (personal income tax), 1092 (corporate tax)
Tax Warrants/Liens: Proposal

• Increase time between notice and demand to docket lien on property to 30 days.
  • Alternatively, postdate lien notices by 10-15 business days to allow for mailing delays

• Increase limit for issuing warrants/liens to $5,000, or $10,000 if taxpayer enters into an installment payment agreement completed within 36 months
DOF Business Collection Alternative (BCA)

FEBRUARY 26, 2019

OFFICE OF THE TAXPAYER ADVOCATE

NYC
Department of Finance

OBJECTIVE
Reduce NYC Department of Finance’s collection process by:
- creating collection alternative
- easing the burden on small business owners experiencing hardships paying New York City business taxes

Areas of Focus
- Offers in Compromise
- Tax Warrants / Liens

BCA Breakdown
- Payment Plans
- Offers in Compromise
- Tax Warrants / Liens
- Collection Statute of Limitations

Penalties
- First-Time Abatements
- Reasonable Cause Abatements
- Current DOF Status
- Limitations of Status
- Comparable Models
- Recommendations

Note: Focus is on small business taxpayers with small businesses that are fixed and final, and not in dispute. DOF already has a system in place to dispute liabilities.