New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-M-08(10)C
TSB-M-08(5)I
TSB-M-08(5)M
TSB-M-08(3)R
TSB-M-08(8)S
All Taxes
August 27, 2008

Changes in Procedures for Obtaining Guidance from the Tax Department

As part of the Tax Department's continuing effort to provide better taxpayer service and improve voluntary compliance, the department has changed some things about the way it provides guidance to taxpayers. These changes, which will be embodied in regulations to be proposed by the department, are designed to make the guidance process easier, faster, and more transparent.

Advisory Opinions

The procedures for review and issuance of Advisory Opinions have been streamlined to improve timeliness. The new procedures help protect taxpayer confidentiality. Taxpayers will soon have the option of submitting a Petition for Advisory Opinion electronically. Advisory Opinions will now be drafted by the Office of Counsel, rather than the Taxpayer Guidance Division. This will free the Taxpayer Guidance Division to issue more general guidance, discussed below, about subjects of interest to a wider audience.

Advisory Opinions will be issued to any person or entity that is, or may be, subject to a tax or liability under the Tax Law, or claiming exemption from a tax or liability under the Tax Law. In addition, Advisory Opinions will be issued to any person or entity that is, or may be, subject to filing or registration requirements under the Tax Law, or claiming exemption from filing or registration requirements under the Tax Law. Effective August 8, 2008, Advisory Opinion petitions will no longer be accepted from any person or entity acting on behalf of unidentified persons or entities.

All Advisory Opinions will be redacted before publication. The name, address and identifying numbers of the petitioner will be automatically redacted. The personal information of natural persons will continue to be protected, as required by law. Additional information will be redacted upon request if, under New York State's Freedom of Information Law, the information constitutes a trade secret, or if disclosure of the information would cause substantial injury to the petitioner's competitive position. The petitioner must clearly identify the information requested to be redacted in the original petition.

In addition, the petitioner may elect, when submitting the petition, to reserve the right to apply for the Voluntary Disclosure and Compliance (VDC) program pursuant to Tax Law section 1700 with respect to the subject of the Advisory Opinion request. If an audit or investigation begins while a petition for Advisory Opinion is under consideration, the electing petitioner will not be prohibited from participating in the VDC program with regard to the subject of the Advisory Opinion. However, the audit or investigation will proceed. If the electing petitioner chooses to participate in the VDC program by then submitting an application,

the department will extend to that petitioner the benefits of the VDC program as long as the petitioner meets all other qualifications for the program. For additional information regarding the VDC program, visit the department's Web site at *www.nystax.gov*.

Guidance from the Office of Counsel

To better use the department's resources and eliminate duplication of functions, requests for letters providing guidance from the Office of Counsel (often referred to as "Advice of Counsel") will no longer be accepted. Taxpayers seeking Advice of Counsel will be asked to submit a petition for an Advisory Opinion instead. This will improve transparency, because all issued Advisory Opinions will be published and similarly-situated taxpayers will have the benefit of the department's analysis of the issue in the Advisory Opinion.

Formal Opinions of Counsel will also be discontinued. Opinions of Counsel are discretionary and intended to interpret and apply the Tax Law to situations of wide applicability. They are similar in many respects to technical memoranda (TSB-Ms), and have ordinarily been issued as TSB-Ms. Discontinuing formal Opinions of Counsel will avoid unnecessary duplication.

Tax Guidance Bulletins

The Taxpayer Guidance Division will begin issuing "Tax Guidance Bulletins." These bulletins will be available on the department's Web site. The bulletins will help taxpayers quickly find guidance on a broad variety of tax subjects. Initially, the bulletins will have a special emphasis on sales tax and selected miscellaneous taxes. Each bulletin will explain the general application of a provision of the Tax Law or the application of the Tax Law to a specific type of business or a particular type of transaction. Tax Guidance Bulletins will be based on the statutes, regulations, court cases and Tax Appeals Tribunal decisions in effect on the date they are issued. The bulletins will be updated as changes in Tax Law or policy take effect so that they will be current when viewed on the department's Web site. Although not binding on the department, Tax Guidance Bulletins are intended to provide general guidance to a wide audience.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.