

RULE REVIEW

Department of Taxation and Finance Rule Continued Without Modification

Pursuant to section 207.4 of the State Administrative Procedure Act, the Department of Taxation and Finance hereby gives notice of the following:

As part of the Department's 2007 review of rules that were adopted during 1997 and 2002, it has reviewed amendments to 20 NYCRR Part 2400, Action for Failure to Release a Lien that were adopted in 1997. The statutory authority for this rule is contained in Tax Law, sections 171, subd. First, and 3032(a) and (d), and section 56(j) of Chapter 577 of the Laws of 1997. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002, and was continued without modification. Notice of the 2002 continuance was published in the Rule Review section of the July 10, 2002, issue of the State Register.

This rule is once again being continued without modification because it implements the statutory scheme contemplated by the Legislature. The regulations provide that the filing of a "notice of failure to release a lien" will be formal notice to the Commissioner that the taxpayer wishes an administrative review of the damages incurred by the taxpayer for the Department's failure to release a lien. The rule also describes the information which must be set forth in the notice, defines when "full satisfaction of the liability assessed or determined occurs" for purposes of starting the 40-day period that a taxpayer must wait prior to bringing suit in the Court of Claims for failure to release the lien, and prescribes the types of bonds and other securities that are acceptable to the Commissioner in order to release the lien. There have been no statutory amendments or changes in policy to warrant any modification of the rule.

A summary of this rule was published in the Rule Review section of the January 3, 2007, issue of the State Register. The 2007 Rule Review, including the summary, was also posted to the Department's Web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>) on January 2, 2007. The Department did not receive any public comment regarding this rule.

For further information contact: John W. Bartlett, Department of Taxation and Finance, Taxpayer Guidance Division, Bldg. 9, W A Harriman Campus, Albany, NY 12227, (518) 457-2254

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