

## **FINANCE MEMORANDUM**

**Department of Finance Policy Relating to the  
Servicemembers Civil Relief Act and the NYS  
Soldiers' and Sailors' Civil Relief Act**

This Finance Memorandum supersedes Finance Memorandum 05-3, issued July 12, 2005.

### **Application Requesting Relief**

In order to promote the goals of the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043) and the New York State Soldiers' and Sailors' Civil Relief Act (NY Military Law Article 13), the Department of Finance (DOF) allows active-duty military personnel (or their representatives) to request relief from certain tax or other debt enforcement actions by completing an application (Application). A copy of this Application is attached to this memorandum. Individuals completing this Application must execute an affidavit with respect to information relating to their military service and the relief that such individual is requesting from DOF.

### **Who Can Receive Benefits?**

The protections described in this memorandum apply to certain members of the Uniformed Services, as such term is defined in 10 U.S.C. § 101(a)(5), who are in military service, as defined in 50 U.S.C. § 3911(2) or any person in military service pursuant to NY Military Law § 301. For the purposes of this memorandum, such members and persons constitute "Servicemembers," and such service constitutes "Military Service." Certain protections related to non-tax debt may also apply to reservists ordered to report for Military Service or induction into service, as set forth in 50 U.S.C. § 3917.

In addition, relief from tax enforcement may extend to dependents of a Servicemember, as defined in 50 U.S.C. § 3911(4) (Dependents), in the manner set forth in 50 U.S.C. § 3991. As set forth in 50 U.S.C. § 3991(e), all forms of property described in 50 U.S.C. § 3991(a) owned individually by a Servicemember or jointly by a Servicemember and a Dependent or Dependents will qualify for such relief. *See also* NY Military Law § 301-b(1) (establishing an analogous framework through which a Dependent may apply to DOF for the same benefits afforded to the Servicemember).

If real property has more than one owner or a vehicle has more than one registrant, and the applicable Servicemember is one of the owners or registrants, as applicable, DOF will review the debt on a case-by-case basis to determine if relief is warranted. (As described in greater detail below, relief from debt other than tax debt may be available to Servicemembers. *See* 50 U.S.C. §§ 3931, 3934.)

An applicant for such benefits is not required to be a New York City resident.

## **Real Property Tax**

- Upon approval of an Application, real property tax liens will be removed from any in rem action or tax lien sale for real property occupied for dwelling, professional, business, or agricultural purposes by a Servicemember or Servicemember's Dependents or employees before the applicable period of Military Service, if such Military Service materially affects their ability to satisfy the tax liens. *See* 50 U.S.C. § 3991(a)-(b); NY Military Law § 314(1), (2). DOF will not undertake such a sale until the expiration of a period extending until 180 days after completion of the Servicemembers' Military Service. 50 U.S.C. § 3991(b)(2); NY Military Law § 314(2).
- If the property tax is not paid when due, the lien will accrue interest until paid at the rate of six percent per year pursuant to 50 U.S.C. § 3991(d) and NY Military Law § 314(4)(a) or the rate that DOF would otherwise charge, whichever is lower, from the date when such tax first became a lien. DOF also offers payment plans on real property tax liens that may provide for a lower interest rate, and if applicable, the lower rate will apply. *See* Admin. Code §§ 11-224.1, 11-322, 11-322.1.

## **Tax Warrants Against the Individual Servicemember: Excise Taxes**

- Upon approval of an Application, DOF will not seek to sell property to satisfy any docketed excise tax warrant if Military Service materially affects the ability to satisfy the applicable tax until at least the expiration of a period extending until 180 days after completion of such Military Service. 50 U.S.C. § 3991(b); NY Military Law § 314(2).
- If a tax is not paid when due, interest will accrue at the rate of six percent per year or the rate DOF charges pursuant to law, whichever is lower, from the date when such tax first became a lien. 50 U.S.C. § 3991(d) and NY Military Law § 314(4)(a). No other interest or penalty shall be incurred, regardless of whether the penalty or interest accrued before or after the beginning of such Military Service.
- If DOF has already issued an execution for the garnishment of wages pursuant to an income execution to collect on a tax warrant, the garnishment may be vacated in a manner consistent with 50 U.S.C. § 3934(a)(2) and NY Military Law § 306(2), if DOF determines that a Servicemember's ability to satisfy the corresponding judgment was materially affected by their Military Service.

## **Tax Warrants Against the Individual Servicemember: Unincorporated Business Tax (UBT) Against an Individual**

Upon approval of an Application, DOF will not seek to collect UBT tax warrants issued against a Servicemember that are due before or during Military Service until 180 days after completion of Military Service, if a Servicemember's ability to pay such tax is materially affected by their Military Service, consistent with 50 U.S.C. § 4000(a) and NY Military Law § 315. No interest or penalties will accrue during this period. 50 U.S.C. § 4000(b); NY Military Law § 315.

If a Servicemember is concerned about their obligation to pay personal income tax to New York City, the Servicemember is directed to contact New York State Department of Taxation and Finance, which administers personal income tax for New York City.

## **Environmental Control Board (ECB) Judgments and Parking Ticket and Camera Violation Judgments**

If DOF determines that a Servicemember's ability to comply with an applicable judgment is materially affected due to their Military Service in a manner consistent with 50 U.S.C. § 3934(a) and NY Military Law § 306, upon approval of an Application, DOF will:

1. Stay the execution or other enforcement of any judgment; and
2. Vacate or stay any attachment or garnishment of property or money.

DOF can vacate the judgment for parking tickets or camera violations. In contrast, a Servicemember must apply to the New York City Office of Administrative Trials and Hearings in order to have an ECB judgment vacated, or debt placed on hold.

With respect to parking ticket and camera violations, a respondent may make a motion to vacate a judgment before an administrative law judge of the Parking Violations Bureau. In accordance with 50 U.S.C. § 3931(g)(1)(A) and (B) and NY Military Law § 303(2), to vacate a default judgment, a Servicemember must demonstrate that:

1. the Servicemember is eligible for such relief;
2. the debt or ownership of the asset is in the Servicemember's name, either individually or jointly;
3. the judgment was issued during Military Service or within 60 days after such Military Service;
4. the motion to the Parking Violation Bureau to vacate the judgment is made not more than 90 days after the applicable period of Military Service ends;
5. the Servicemember was materially affected in defending the matter due to their Military Service; and
6. the Servicemember has a meritorious legal defense.

### **General Provisions**

Any proceedings related to the charges above shall be stayed pursuant to 50 U.S.C. §§ 3931(d), 3932 and NY Military Law § 304.

DOF has issued this Finance Memorandum to advise judgment debtors, taxpayers, and tax professionals of and explain DOF's current position and procedures so that they may act accordingly. Except to the extent specifically incorporated into a provision of law, Finance Memoranda are advisory in nature and are merely explanatory. Finance Memoranda are not declaratory rulings or rules of DOF and, except to the extent specifically incorporated into a provision of law, do not have legal force or effect, do not set precedent, and are not binding on taxpayers.

**MILITARY PERSONNEL APPLICATION**

Mail to: NYC Department of Finance, Collections Division, 59 Maiden Lane, 28th floor, New York, NY 10038

**Instructions:** Use this form if you are an active member of the military or a reservist ordered to report for induction or military service ("service member"); or if you are a service member's spouse, registered domestic partner or dependent (unmarried child under the age of 18 or unmarried child ages 18-23 in school full-time, or anyone else for whom the service member provided at least 50% of their support for 180 days before the date of this application). Please see Finance Memorandum 05-3, July 12, 2005, for further details.

**SECTION I - APPLICANT INFORMATION**

Complete item 1 and any other item in this section that is applicable. Please print clearly.

1. Service member's Name: \_\_\_\_\_
- Address: \_\_\_\_\_  
STREET ADDRESS CITY STATE ZIP CODE
2. Dependent's Name: \_\_\_\_\_
- Address: \_\_\_\_\_  
STREET ADDRESS CITY STATE ZIP CODE
3. Agent/Representative name: \_\_\_\_\_
- Address: \_\_\_\_\_  
STREET ADDRESS CITY STATE ZIP CODE
4. Indicate the name of the service member for which you have the Power of Attorney:  
(A copy of the Power of Attorney must be attached) \_\_\_\_\_  
SERVICEMEMBER'S NAME

**SECTION II - MILITARY STATUS**

Select and complete Items 1 or 2 and Items 3 through 5 below.

1. ☐ The service member is active and serving full time duty in the Army, Navy, Marine Corps, Air Force, Coast Guard or a member of the National Guard of the United States of America.
2. ☐ The service member is a reservist who has been ordered to report for induction or military service.  
Indicate the branch and order/commission date: \_\_\_\_\_  
BRANCH DATE
3. ☐ I have attached a copy of the Order or Commission instructing the individual service member to report for military service.
4. List rank of service member: \_\_\_\_\_  
PRINT RANK
5. Indicate the service member's social security number: 

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Select and complete the applicable tax provision section(s) from the list below:

☐ The service member owns and occupies the property, for dwelling, professional, business or agricultural purposes, or the property is occupied by the service member's dependents or employees for such purposes during the period of the service member's service.

**b. Property Address:** \_\_\_\_\_

STREET ADDRESS	CITY	STATE	ZIP CODE

a. Indicate service member's social security number: 

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Warrant Number	Type of Tax	Tax Period	Docket Date

**a.** Indicate the New York City Environmental Control Judgments that have been docketed against the service member:

Violation Number	Property Address			
#	STREET	CITY	STATE	ZIP CODE
#				

ATTACH ADDITIONAL PAGE IF NECESSARY

**a.** Indicate service member's license plate number(s):

Plate #: Plate #: Plate #:

ATTACH ADDITIONAL PAGE IF NECESSARY

I agree and I am aware that any intentional false statement on this application would subject me to criminal prosecution and acknowledge that the Department of Finance is acting in reliance on the statements that I have made in this application in deciding whether to apply the benefits of the law to the enforcement of the judgments, to the applicable interest rates or to the real property tax in question.

PRINT NAME OF APPLICANT
SIGNATURE
DATE

STATE OF NEW YORK }  
COUNTY OF } ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_  
to me known, who, being by me duly sworn did depose and say that (s)he resides at:

STREET ADDRESS	CITY	STATE	ZIP CODE
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and that (s)he executed this application.

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

▲ NOTARY STAMP OR SEAL HERE ▲