

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-M-03(6)C
TSB-M-03(7)I
TSB-M-03(7)S
TSB-M-03(6)M
TSB-M-03(6)R
All Taxes
December 9, 2003

**Legislative Amendment Relating to the Abatement of Interest Attributable to
Misappropriated Payments**

On September 9, 2003, Governor George E. Pataki signed Chapter 491 of the Laws of 2003 which authorizes the Commissioner of Taxation and Finance (Commissioner) to abate interest with respect to misappropriated payments.

Effective September 9, 2003, the provisions of this legislation amend section 3008 of the Tax Law by adding a new subdivision (d). The amendment expands the Commissioner's authority to abate interest to include assessments or final determinations of interest where a taxpayer's payment is misappropriated through no fault of the taxpayer or the department.

The new provisions authorize the Commissioner to abate any assessment or final determination of interest attributable to the misappropriation of a taxpayer's payment, for a specific period of time, where:

- the taxpayer timely makes payment to the department for a liability incurred for any tax, and the taxpayer's account with the department is not properly credited for the payment as a result of a misappropriation of the payment;
- the taxpayer does not cause or contribute to the misappropriation of the payment; and
- the taxpayer makes a replacement payment to the department for the original amount of tax due no later than one year from the mailing date of the department's notice for failure to pay.

In the instance described above, the Commissioner is authorized to abate interest for some or all of the period of time from the date of underpayment to the earliest of:

- the date which is one year from the date the department's notice of failure to pay was mailed;
- the date which is one year from the date the taxpayer discovers the payment was not properly credited to its account; or
- thirty days from the date the taxpayer recovers the use of the misappropriated funds.

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The term *misappropriation* is defined as “circumstances in which a person wrongfully intercepts a taxpayer’s payment tendered to the department prior to the department crediting the taxpayer’s account, and obtains use of the taxpayer’s funds.”

The new provisions apply to all taxes, fees and impositions administered by the Commissioner. (Tax Law section 3002(a)).

For information concerning other existing authority of the Commissioner to abate interest, see page 2 of TSB-M-93(2)C, I, M, R, and S, *Chapter 770 of the Law of 1992* and page 5 of TSB-M-97(10)C, (5)I, (9)M, (3)R and (13)S, *Taxpayer Bill of Rights Act of 1997*.