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

TSB-M-00(2)C
Corporation Tax
October 13, 2000

Summary of 2000 Corporation Tax Legislative Changes Taking Effect in 2000

This memorandum contains brief summaries of the corporation tax legislative changes (Chapter 63 of the Laws of 2000) that take effect in 2000. A separate memorandum will be issued in the future to explain the corporation tax changes that take effect in 2001 and after.

Industrial or manufacturing business (IMB) credit (Article 9-A)

For taxable years ending on or after January 1, 2000, industrial or manufacturing businesses (IMBs) will be allowed a credit against taxes imposed under Article 9-A of the Tax Law. The credit is equal to the sum, or pro-rata share of the sum, of certain taxes imposed under sections 186-a, 186-c, 189, and 189-a of Article 9 of the Tax Law which were either paid by or passed through to the IMB during the taxable year. The credit is limited to the Article 9 taxes imposed on gas, electricity, steam, water, or refrigeration; or gas, electricity, steam, water, or refrigeration services, used or consumed in New York State.

The term *industrial or manufacturing business* means a business, which during the taxable year is: principally engaged in manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, commercial fishing, or research and development; or is an industrial waste treatment facility, or an air pollution control facility; or is principally engaged in any combination of the foregoing activities. If a business has facilities, branches or divisions both within and outside of New York State, the test would apply to the activities of the entire business. Also, each business entity within a combined tax filing group would make the determination separately.

Any person who collects from, or passes through to the IMB, any tax imposed under sections 186-a, 186-c, 189, and 189-a, must provide the IMB with the information required to compute this credit.

The IMB credit applies to taxes paid or passed through on or after January 1, 2000. This credit may not reduce your tax to less than the greater of the tax on minimum taxable income or the fixed dollar minimum. Any portion of the credit that cannot be applied to the current year's tax may be refunded without interest, or applied as a payment against next year's tax.

The IMB credit expires for taxable years ending on or after January 1, 2007.

(See Tax Law, section 14-a)

Alternative fuels credit extended (Article 9-A)

The alternative fuels credit for certain electric vehicles and clean-fuel vehicle property has been extended to include taxable years beginning in 2002 and 2003. The credit is for electric vehicles manufactured in New York State, or clean-fuel vehicle property which is installed in or manufactured as part of a motor vehicle in New York State, where these vehicles are first sold or first leased to a governmental unit. The total amount of the credit allowed to a taxpayer for both electric vehicles and clean-fuel vehicle property for taxable years beginning in 2002 and 2003 is capped at $2.5 million for each year. For additional information on this credit see TSB-M-98(6)C and TSB-M-99(3)C.

(See Tax Law, section 210.24.)

Transportation improvement contribution credit (Articles 9, 9-A, 32, and 33)

Section 20 of the Tax Law was added to provide a refundable credit to taxpayers who make contributions to the state in taxable years beginning on or after January 1, 2000, for qualified transportation improvement projects. These projects must be designed, in part, to enhance the planned construction or expansion of a qualified business facility.

To qualify for the credit, the taxpayer's contribution to the project must be:

1) at least $10 million, and

2) certified jointly by the Commissioner of Transportation and the Commissioner of Economic Development as a qualified transportation improvement project.

The taxpayer must also satisfy an employment increase test whereby 1000 new jobs are created in connection with the qualified business facility.

The credit is equal to 6% of the taxpayer's excess payroll at the qualified business facility over the taxpayer's base period payroll, not to exceed the amount of the taxpayer's contribution. The credit can be claimed in the year following the contribution year and each year thereafter in which the taxpayer's New York payroll exceeds the average base period payroll, until the aggregate credits claimed by the taxpayer equal the amount of the taxpayer's contribution.

Section 20 provides for a recapture, with interest, of all credit taken if the taxpayer does not meet the 1,000 employee goal in the third full taxable year next following the year the contribution was made.

The credit may not be applied against the following taxes:

- the applicable minimum tax fixed by section 183 or 185; or

- the larger of the tax on minimum taxable income base or fixed dollar minimum as computed under Article 9-A; or

- the fixed minimum tax of $250 computed under Article 32; or
- the minimum tax of $250 under Article 33.

Any portion of the credit that cannot be applied to the current year's tax may be refunded without interest, or applied as a payment against next year's tax.

(See Tax Law, sections 20, 187-e, 210.32, 1456(n), 1511(p))

Low income housing credit (Articles 9-A, 32, and 33)

A "New York State Low Income Housing Tax Credit Program" has been established to promote the construction and rehabilitation of low-income housing in New York State. The credit program coordinates with and builds upon the federal low-income housing credit which is provided for in section 42 of the Internal Revenue Code. The state credit, like the federal credit, will be administered by the New York State Division of Housing and Community Renewal.

The credit is available to owners of a building who are subject to tax under Articles 9-A, 32, or 33, and may be claimed for taxable years beginning on or after January 1, 2000. The amount of the credit for each building is determined by the Commissioner of the Division of Housing and Community Renewal under Article 2-A of the Public Housing Law. The credit amount allocated to a project by the Commissioner is allowed each year for 10 years. However, the project must continue to qualify as low-income housing for a 15-year compliance period to avoid a partial recapture of the credit. The credit is not refundable, but any amount of the credit not used in the current tax year may be carried over for an unlimited number of years.

The credit may not be applied against the following taxes:

- the larger of the tax on minimum taxable income base or fixed dollar minimum as computed under Article 9-A; or
- the fixed minimum tax of $250 computed under Article 32; or
- the minimum tax of $250 under Article 33, or
- the metropolitan transportation business tax surcharge (MTA surcharge) under Articles 9-A, 32, or 33.

Additional information will soon be available on the website of the Division of Housing and Community Renewal. (http://www.dhcr.state.ny.us)

(See Tax Law, sections 18, 210.30, 1456(l), and 1511(n), and the Public Housing Law, Article 2-A.)

Investment tax credit carryover (Article 9-A)

Certain taxpayers will be allowed to transfer their investment tax credit (ITC) to a transferee corporation in a "qualified transaction." A qualified transaction is defined as a stock-for-assets spinoff where substantially all of the assets of the transferor necessary to continue the operation of a division or divisions of the transferor are transferred to the transferee under section 351 of the Internal Revenue Code (IRC); and stock or securities of the transferee held by the transferor are distributed to the transferor's shareholders under IRC section 355. The credit transfer will be allowed for investment credit property transferred as part of the spinoff, where recapture or limitation of the ITC would otherwise be required.

Two options are allowed for the credit transfer:

1. If the transferor and transferee jointly elect, the transferor would not be required to recapture its ITC on the transferred property. The transferee would then acquire the transferor's unused ITC.

2. If the transferor and transferee do not jointly elect the first option, the transferor would be required to recapture its ITC. The transferee would obtain the recaptured amount as its credit.

Under either option, the transferee would treat the transferor's holding period and original cost as if it were its own for purposes of possible recapture. If the transferred credit exceeds the transferee's tax, the transferee would be entitled to a refund (without interest) in the year of the credit. The credit allowed to the transferee is available in four equal portions beginning in the second succeeding taxable year following the transaction year.

The transfer of the ITC applies to transfers of property occurring on or after January 1, 1999, in connection with qualified transactions completed prior to June 1, 1999, where the transfers occur in a taxable year of the transferee of the property which began in 1999.

(See Tax Law section 210.12(g)(11).)

Change in the effective date of the repeal of corporate acquisitions, mergers, and consolidations provisions (Article 9-A)

The effective date of Section 20 of Part M of Chapter 407 of the laws of 1999 relating to the repeal of the mergers and acquisitions provisions in Articles 9-A of the Tax Law, as well as the Administrative Code of the City of New York, has been changed.

Section 20 of Part M of Chapter 407 of the laws of 1999 repealed the mergers and acquisitions provisions effective for taxable years beginning on or after January 1, 2000. This year's legislation moves the effective date of the repeal to taxable years beginning on or after January 1,

1997. Amended returns based on this change in date may **not** be filed prior to April 1, 2001. For any returns whose statute of limitations has expired by April 1, 2001, the legislation allows amended returns to be filed until March 31, 2002.

(Tax Law sections 208.9(b)(6-a), (12), (13) and (14); 208.9(f)(2-a), (2-b) and (2-c); 208.13; 208.14; 208.15; 208.16; 208.17; 208.18; 210.12(g)(9), (10) and (11); and 210.18(f)(5),(6) and(7) and the amendment of sections 208.4; 208.6; 208.9(a)(2); 210.12-A(c); 210.12(e); 210.12-D(c) and 210.18(e))

Homeowners associations (Article 9-A)

For taxable years beginning on or after January 1, 2000, qualified homeowners associations with no federal taxable income are no longer subject to the fixed dollar minimum tax or the metropolitan transportation business tax (MTA surcharge) computed on the fixed dollar minimum under Article 9-A. The term *qualified homeowners association* means a homeowners association as defined by section 528(c) of the IRC without regard to section 528(c)(1)(E), regarding the election to be taxed pursuant to such section. Homeowners associations with no federal taxable income may still owe tax on the other bases and the MTA surcharge computed on these bases. A homeowners association which owes no tax or MTA surcharge is still required to file a tax return and MTA surcharge return.

(Tax Law, section 210(C))

Certain utility taxes are repealed (Articles 9 and 9-A)

Beginning January 1, 2000, (1) the franchise tax on utility corporations under section 186 of the Tax Law including the MTA surcharge on utilities under section 186-b of the Tax Law is repealed, and (2) corporations that are principally engaged in the transportation, transmission, or distribution of gas, electricity, or steam (TTD corporations) are exempted from the franchise taxes under sections 183 and 184 of the Tax Law. Corporations formerly paying those taxes are now subject to the franchise tax on general business corporations under Article 9-A of the Tax Law. (In some unusual cases, a utility or TTD corporation that is a subsidiary of a banking corporation will be subject to Article 32 of the Tax Law, Franchise Tax on Banking Corporations, rather than Article 9-A.)

Utility corporations are subject to tax under Article 9-A

Beginning January 1, 2000, the repeal of the franchise tax on utility corporations under section 186 of the Tax Law has caused these utility corporations to become subject to the franchise tax on business corporations under Article 9-A (or Article 32) of the Tax Law. **Exception:** A *continuing section 186 taxpayer* will remain subject to tax under section 186 until December 31 of the contract termination year unless that taxpayer makes an irrevocable election not to be subject to tax under section 186. The election should be made by filing a franchise tax return under Article 9-A, Forms CT-3, CT-3-A, CT-3-S, or CT-3-S-A (or under Article 32, Forms CT-32, CT-32-A, or CT-32-S), on the date or extended date the return is due.

A *continuing section 186 taxpayer* is a utility corporation (a) that is primarily engaged in the business of co-generation with respect to a tax year ending on December 31, 1999 (either directly or by reason of membership in a partnership which is so engaged), (b) that was subject to tax under Tax Law section 186 (but not under Tax Law section 186-a) for a tax year ending on December 31, 1999, and (c) that is a party to a total output contract.

A *total output contract* is a contract that is binding on its parties as of January 1, 2000, until the contract termination year, and that provides for the sale of all electricity produced for sale by the taxpayer.

A *contract termination year* is the calendar year containing the termination date of the total output contract as the contract was in effect on January 1, 2000, without regard to any extensions agreed to or created after January 1, 2000.

(See Tax Law, section 209.4 and Ch.63, L.2000, Part Y, sections 3 and 44.)

TTD corporations are subject to tax under Article 9-A

Beginning January 1, 2000, corporations principally engaged in the transportation, transmission, or distribution of gas, electricity, or steam (TTD corporations) will no longer be subject to tax under sections 183 or 184 of the Tax Law. Beginning January 1, 2000, these corporations are subject to the franchise tax on business corporations under Article 9-A (or the franchise tax on banking corporations under Article 32).

(See Tax Law, sections 183 and 184.)

Receipts from services performed for transporting or transmitting gas through pipes (Article 9-A)

For purposes of determining the amount of receipts to include in the numerators of the Article 9-A receipts factors of both the business allocation percentage and the alternative business allocation percentage, the amount of receipts from transporting or transmitting gas through pipes arising in New York State is determined as follows: Multiply total receipts from transporting or transmitting gas through pipes by a fraction, the numerator of which is the number of transportation units within New York State and the denominator of which is the total number of transportation units both within and outside of New York State. A *transportation unit* is the transportation of one cubic foot of gas over a distance of one mile.

(See Tax Law, section 210.3(a)(2)(B).)

Adjustments to entire net income for qualified public utilities and transferees, qualified power producers, and qualified pipeline corporations (Article 9-A)

Beginning January 1, 2000:

- Utility corporations that are qualified public utilities must adjust entire net income to reflect modifications for depreciation and federal gain or loss on transition property, and for regulatory assets pursuant to section 208.9(c-2) of the Tax Law.

- Transferees (whether or not qualified public utilities) of transition property from a qualified public utility in a tax-free transaction must adjust entire net income to reflect modifications to federal gain or loss subsequently recognized on the transition property, pursuant to section 208.9(c-2)(6)(B)(iv) of the Tax Law.

- Qualified power producers and qualified pipeline corporations must adjust entire net income to reflect modifications for depreciation on transition property, pursuant to section 208.9(c-3) of the Tax Law.

A *qualified public utility* is a taxpayer that was subject to ratemaking supervision by the New York State Department of Public Service on December 31, 1999, and was subject to tax under section 186 of Article 9 of the Tax Law for the tax year ending on December 31, 1999.

A *qualified power producer* is a taxpayer that was not subject to ratemaking supervision by the New York State Department of Public Service on December 31, 1999, and was subject to tax under section 186 of Article 9 of the Tax Law for the tax year ending on December 31, 1999, on account of being principally engaged in the business of supplying electricity.

A *qualified pipeline* is a taxpayer that was subject to ratemaking supervision by the Federal Energy Regulatory Commission or the New York State Department of Public Service on December 31, 1999, and was subject to tax under sections 183 and 184 of Article 9 of the Tax Law for the tax year ending on December 31, 1999, on account of being principally engaged in the business of pipeline transmission.

Transition property is property placed in service by a qualified public utility, qualified power producer, or qualified pipeline before January 1, 2000, for which a depreciation deduction is allowed under section 167 of the IRC. Property is transition property only with respect to the taxpayer which owns it on January 1, 2000, and is not transition property in the hands of a subsequent transferee.

(See Tax Law, sections 208.9(c-2) and (c-3).)

Utility tax changes and rate reductions on gross income/gross operating income under section 186-a (Article 9)

The tax imposed under section 186-a (tax on the furnishing of utility services) has been extensively revised (except for providers of telecommunication services). A taxpayer that is subject to the supervision of the New York State Department of Public Service, is subject to the section 186-a tax on gross income and is required to separate its gross income into the following categories: (1) gross income from noncommodity gas and electric service receipts (receipts from the transportation, transmission, or distribution of gas or electricity), and (2) other gross income (receipts from the sale of the commodities of gas, electricity, steam, water, and refrigeration; and from steam, water, and refrigeration service). The reduced rates of tax for these categories of gross income are as follows:

<u>Gross income from noncommodity gas and electric service receipts</u>

Taxable Year	Rate
January1, 2000 - December 31, 2000	2.5%
January1, 2001 - December 31, 2001	2.45%
January1, 2002 - December 31, 2002	2.4%
January1, 2003 - December 31, 2003	2.25%
January1, 2004 - December 31, 2004	2.125%
January1, 2005 and thereafter	2%

<u>Other gross income</u>

Taxable Year	Rate
January1, 2000 - December 31, 2000	2.1%
January1, 2001 - December 31, 2001	2.0%
January1, 2002 - December 31, 2002	1.9%
January1, 2003 - December 31, 2003	0.85%
January1, 2004 - December 31, 2004	0.4%
January1, 2005 and thereafter	0%

<u>Gross operating income</u>

A taxpayer (whether or not a provider of telecommunication services), that is **not** subject to the supervision of the New York State Department of Public Service that engages in the sale or furnishing of gas, electricity, steam, water, or refrigeration service through the use of mains, pipes, or wires for ultimate consumption or use by the purchaser in New York State, is subject to the section 186-a tax on gross operating income. The rate of tax on gross operating income is reduced and eliminated in accordance with the schedule as shown above for *Other gross income*.

(See Tax Law, section186-a.)

For all taxpayers that are subject to tax under section 186-a, the restriction on showing the tax on bills to customers is eliminated (Article 9)

The amount of section 186-a tax paid by a utility for any taxable year ending after January 1, 2000, may be added as a separate item to bills rendered by the utility to customers. Upon request, the utility must furnish a statement to its customers for bills rendered on or after January 1, 2000, showing the amount of tax imposed by section 186-a that was added to bills rendered by the utility to customers.

(See Tax Law, section 186-a(6).)

For taxpayers that are subject to the section 186-a tax on gross income, an exclusion for certain receipts is added (Article 9)

Beginning January 1, 2000, receipts from the following sales are excluded from gross income:

- Sales of transportation, transmission, or distribution of gas or electricity by means of conduits, mains, pipes, wires, lines, or the like:
    - to a utility (excluding a public authority) supervised by New York State or another jurisdiction (where an element of this supervision includes rate regulation and, for a utility supervised by another jurisdiction, this supervision includes rate regulation and the gas or electricity is delivered for ultimate consumption or use outside New York State); or
    - to a municipality that owns and operates facilities that are used to generate or distribute electricity or distribute gas and that distributes and sells this electricity or gas solely at retail, solely within its jurisdiction; or
    - to a public authority of New York State when that public authority is primarily engaged in the generation and transmission or distribution of electricity or the distribution of electricity or gas and at least 95% of its assets are so devoted. However, if the service area or district of the authority is less than the entire state, the excluded receipt shall be limited to receipts derived from the sale of transportation, transmission, or distribution of gas or electricity sold by this authority at retail within its service area or district.
- Sales of transmission or distribution of electricity to a municipality when the electricity being transported:
    - has been purchased by that municipality,

S has been generated solely by and purchased solely from New York State or a public authority of New York State (except when the electricity being transmitted or distributed constitutes temporary substitution power being supplied during outages or periods of reduced output), and

S the municipality sells the electricity being transmitted or distributed solely at retail and solely within its jurisdiction.

- Sales of transportation, transmission, or distribution of gas or electricity to corporations and associations organized and operated exclusively for religious, charitable, or educational purposes, described in section 1116(a)(4) of the Tax Law, when that organization resells the transportation, transmission, or distribution as part of a bundled gas or electric service as landlord to its tenants in buildings owned by that organization.

  (See Tax Law, section 186-a(6).)

The Metropolitan Transportation Business Tax Surcharge (MTA surcharge) on gross income and gross operating income under section 186-a is revised (Article 9)

A taxpayer who does business in the Metropolitan Commuter Transportation District (MCTD), is subject to the MTA surcharge. The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

For taxpayers who do not provide telecommunication services: Beginning January 1, 2000, for a taxpayer supervised by the New York State Department of Public Service, who does business in the MCTD, the MTA surcharge is computed using the actual tax rate on gross income for that tax year. (For a listing of the tax rates on gross income, see *Utility tax changes and rate reductions on gross income/gross operating income under section 186-a (Article 9)* on page 7.) The MTA surcharge is no longer computed as if the tax rate on gross income were 3.5%.

For these supervised taxpayers, the MTA surcharge is equal to the sum of (1) the gross income from noncommodity gas and electric service receipts that is derived from sources within the MCTD multiplied by the MTA surcharge rate **plus** (2) other gross income that is derived from sources within the MCTD multiplied by the MTA surcharge rate. The MTA surcharge rate is 17% of the state tax rate that was in effect for each category of gross income for the taxable year.

For example, the MTA surcharge for calendar year 2000 is computed using the 2.5% and 2.1% tax rates on gross income. For gross income from noncommodity gas and electric service receipts (receipts from the transportation, transmission, or distribution of gas or electricity) that are derived from sources within the MCTD, the MTA surcharge rate is .425%

(.17 x .025 = .00425 = .425%). For other gross income (receipts from the sale of the commodities of gas, electricity, steam, water, and refrigeration; and from steam, water, and refrigeration service) that are derived from sources within the MCTD, the MTA surcharge rate is .357% (.17 x .021 = .00357 = .357%).

For taxpayers who do not provide telecommunication services: Beginning January 1, 2000, for a taxpayer **not** supervised by the New York State Department of Public Service, who does business in the MCTD, the MTA surcharge is computed using the actual tax rate on gross operating income for that tax year. (For a listing of the tax rates on gross operating income, see *Utility tax changes and rate reductions on gross income/gross operating income under section 186-a (Article 9)* on page 7.) The MTA surcharge is no longer computed as if the tax rate on gross operating income were 3.5%.

For these unsupervised taxpayers, the MTA surcharge is equal to the gross operating income derived from sources within the MCTD multiplied by the MTA surcharge rate. The MTA surcharge rate is 17% of the state tax rate that was in effect for gross operating income for the taxable year.

For example, the MTA surcharge for calendar year 2000 is computed using the 2.1% tax rate on gross operating income. The MTA surcharge rate is .357% (.17 x .021 = .00357 = .357%).

(See Tax Law, section 186-c.)

For taxpayers who provide telecommunication services that are subject to the section 186-a tax (Article 9)

Providers of telecommunication services that are subject to tax on gross income will continue to be subject to tax on all their gross income at the rate of 2.5% and will continue to compute their MTA surcharge as if the tax rate on gross income were 3.5%, rather than 2.5%. For these taxpayers, the MTA surcharge rate is .595% (.17 x .035 = .00595 = .595%).

Beginning January 1, 2000, for providers of telecommunication services that are subject to tax on gross operating income, the:

- Rate of tax on gross operating income is reduced and eliminated according to the same schedule as that shown on page 8 for *Other gross income*.

- MTA surcharge is computed using the actual tax rate on gross operating income for that tax year. (For a listing of the tax rates on gross operating income, see *Utility tax changes and rate reductions on gross income/gross operating income under section 186-a (Article 9)* on page 7.) The MTA surcharge is no longer computed as if the tax rate on gross income were 3.5%. For these taxpayers, the MTA surcharge is equal to the gross operating income derived from sources within the MCTD multiplied by the MTA surcharge rate. The MTA surcharge rate is 17% of the state tax rate that was in effect for gross operating income for the taxable year. For example, the MTA surcharge for calendar year 2000 is computed using the 2.1% tax rate on gross operating income. The MTA surcharge rate is .357% (.17 x .021 = .00357 = .357%).

(See Tax Law, sections 186-a and 186-c.)

Certain municipalities are subject to tax under section 186-a (Article 9)

Beginning January 1, 2000, the following are taxpayers subject to tax under section 186-a if they sell gas or electricity, or gas or electric service:

- All municipalities, political and civil subdivisions, and public districts that sell or furnish gas, electricity, or gas or electric service (including the sale of the transportation, transmission, or distribution of gas or electricity), **except** those that own and operate facilities used to generate electricity or to distribute electricity or gas, and then sell and distribute that electricity or gas solely at retail within their jurisdiction.

- All municipalities engaged in the retail sale of electricity or the transportation, transmission, or distribution of electricity, **except** a municipality that solely sells electricity at retail where all such electricity has been generated solely by and purchased solely from New York State or a public authority of New York State (such as the New York State Power Authority).

When computing the tax on gross income or gross operating income under section 186-a, these taxpayers should only include their receipts from the sale of gas and electric service of whatever nature. The following receipts, for example, would not be subject to tax under section186-a:

- Receipts from the sale of steam, water, and refrigeration services of whatever nature within New York State.

- Receipts from interest, dividends, and royalties from sources within New York State.

- Profits from the sale of securities, real property, personal property, and from any other transaction.

The exemption from the tax under section 186-a for certain not-for-profit corporations has been clarified (Article 9)

A clarification has been added to the charitable, educational and religious organization exclusion to make it clear that these organizations must qualify under section 1116(a)(4) of the Tax Law and, then sales by these organizations are exempt only to the extent that the sales are to its tenants. Accordingly, beginning January 1, 2000, not-for-profit corporations and associations described in section 1116(a)(4) of the Tax Law, organized and operated exclusively for religious, charitable, or educational purposes (only when the organization resells gas or electricity or gas or electric service as landlord to its tenants in buildings owned by the organization) are exempt from taxation under section 186-a.

Power for jobs tax credit expanded (Article 9)

The power for jobs tax credit claimed on Form CT-186-P, available to qualified electric corporations that are local distribution companies for taxable periods 1997 through 2003, has been extended to include taxable periods 1997 through 2005.

(See Tax Law, section 210.1.)

Gas importation tax rate reductions and repeal (Article 9)

The Tax Law under Section 189 of Article 9 has been amended to provide a series of tax rate reductions on the importation of gas services.

The tax rates have been reduced as follows:

For taxable months between:	Tax rate
January 1, 2000 through December 31, 2000	2.1%
January 1, 2001 through December 31, 2001	2.0%
January 1, 2002 through December 31, 2002	1.9%
January 1, 2003 through December 31, 2003	0.85%
January 1, 2004 through December 31, 2004	0.4%

After January 1, 2005, the tax is repealed.

Effective immediately, a tax reduction credit is allowed for taxpayers who paid the tax on importation of gas services (Tax Law section 189) for periods beginning on October 1, 1998 through December 31, 1999. The credit is equal to the difference between the amount of tax paid at the 4.25% rate for this period, minus the tax that would have been paid if the tax rate were 4%.

(See Tax Law, section 189)

Transitional provisions for the federal Gramm-Leach-Bliley Act (Articles 9-A and 32)

Article 32 of the Tax Law was amended to provide transitional rules relating to the enactment and implementation of the federal Gramm-Leach-Bliley Act. This act repealed some provisions of the federal Glass-Steagall Act, which prevented the affiliation of banks, securities firms and insurance companies. Under the Gramm-Leach-Bliley Act, a new entity was created called a financial holding company(FHC) that can own banks, insurance companies and securities firms. As a result of this legislation, the Tax Law was amended to allow certain corporations that qualify as FHCs during 2000 and that were taxed under the Article 9-A corporate franchise or the Article 32 bank tax in 1999 to retain their tax status in 2000.

A banking corporation that was in existence before January 1, 2000, and was subject to tax under Article 32 during 1999, shall remain taxable under Article 32 for all taxable years beginning on or after January 1, 2000 and before January 1, 2001. A corporation that is not a taxpayer, which was properly included in an Article 32 combined report for a tax year, will be considered, for purposes of this transition provision, to be subject to tax under Article 32 for that tax year.

A banking corporation that was in existence before January 1, 2000, but first became a taxpayer in the period January 1, 2000, through December 31, 2000, will be subject to tax under Article 32 if it would have been taxable under Article 32 in its last taxable year beginning before January 1, 2000.

A corporation that was in existence before January 1, 2000, and was subject to tax under Article 9-A during 1999, shall remain taxable under Article 9-A for all taxable years beginning on or after January 1, 2000, and before January 1, 2001. A corporation that is not a taxpayer, which was properly included in an Article 9-A combined report for as tax year, will be considered, for purposes of this transition provision, to be subject to tax under Article 9-A for that tax year.

A corporation that was in existence before January 1, 2000, but first became a taxpayer in the period January 1, 2000, through December 31, 2000, will be subject to tax under Article 9-A or Article 32 if it would have been taxable under Article 9-A or Article 32, respectively, in its last taxable year beginning before January 1, 2000.

A corporation formed on or after January 1, 2000, and before January 1, 2001, may elect to be subject to tax under Article 32 or Article 9-A for its first taxable year beginning on or after January 1, 2000, and before January 1, 2001, if the corporation:

- is a financial subsidiary, **or**
- meets both of the following requirements:
  - 65% or more of the corporation's voting stock is owned or controlled, directly or indirectly, by a financial holding company; and

- the corporation is principally engaged in activities that are described in section 4(k)4 or 4(k)5 of the federal Bank Holding Company Act of 1956 (12 USCS sections 1843(k)(4) and (5)), as amended, or described in any regulations or orders promulgated under the authority of that section.

The corporation must make the election on or before the due date for filing its franchise tax return (with regard to any extension of time for filing). The election is made by filing a franchise tax return under Article 32 or Article 9-A for the tax year. The election is irrevocable.

Under the Tax Law, a *financial holding company* is defined as a corporation that has filed a written declaration with the Federal Reserve Board under subsection (l) of section 4 of the federal Bank Holding Company Act of 1956 (12 USCS section 1843(l)), that elects to be a financial holding company and whose election has not been found to be ineffective by the Federal Reserve Board.

A *financial subsidiary* is a corporation whose voting stock is 65% or more owned or controlled, directly or indirectly, by a national bank as described in section 5136A(g) of the Revised Statutes of the United States (12 USCS section 24a) or a state bank described in section 46 of the Federal Deposit Insurance Act (12 USCS section 1831w) which is a member of the federal reserve system or is insured by the Federal Deposit Insurance Corporation.

In addition, a financial holding company, for its taxable year beginning in 2000, may be included in a combined return without seeking permission from the Department of Taxation and Finance with any banking corporation whose voting stock is 65% or more owned or controlled, directly or indirectly, by that financial holding company, provided both companies are exercising their corporate franchise or doing business in New York State. The Department of Taxation and Finance may not require a financial holding company to file a combined return with any banking corporation whose voting stock is 65% or more owned or controlled, directly or indirectly, by that financial holding company. These provisions apply only to financial holding companies which register with the Federal Reserve Board for the first time in 2000 to be a bank holding company.

The banking corporation franchise tax provisions of the Administrative Code of the City of New York were also amended to provide for these legislative changes.

Certified capital company (CAPCO) credits extended (Article 33)

The program that provides insurance companies with a credit against their franchise tax for investing in certified capital companies (CAPCOs) has been extended through 2002. This one-year extension is denoted as *Certified Capital Company Program Three* (Program Three). As a result, the credit has also been extended.

Insurance companies that participate in Program Three can invest $150 million in CAPCOs and collectively claim tax credits totaling up to $150 million. The credit must be claimed over ten years with ten percent allowed each year. Any credits not used can be carried over for an unlimited number of years. The total credit available in any particular taxable year, which is the combination of the ten percent allowed for that year plus any carryovers from prior years, cannot reduce the tax below the fixed dollar minimum tax.

Insurance companies may make investments in CAPCOs under Program Three beginning in 2000. However, they will not be allowed to claim the tax credits until 2002. One third of the certified capital received by a CAPCO under Program Three must be used by the CAPCO to make qualified investments in qualified businesses located in empire zones. Another one-third of the certified capital must be used by the CAPCO to make qualified investments in qualified businesses located in underserved areas outside empire zones. An underserved area is defined as a county, including a county wholly within a city, in which, as of January 1, 2000, less than 25% of the qualified investments in qualified businesses were made by CAPCOs under CAPCO Program One.

The Superintendent of Insurance will start accepting applications to become a CAPCO in Program Three by August 1, 2000.

(Tax Law, sections 11 and 1511(k))