

**Utility and TTD corporations  
now subject to tax under Article 9-A or 32 of the Tax Law**

**General**

Governor Pataki's Energy Tax Plan has (1) repealed the franchise tax on utility corporations under section 186 of the Tax Law including the metropolitan transportation business tax surcharge (MTA surcharge) on utilities under section 186-b of the Tax Law, and (2) exempted from the franchise taxes under sections 183 and 184 of the Tax Law those corporations that are principally engaged in the transportation, transmission, or distribution of gas, electricity, or steam (TTD corporations). Beginning January 1, 2000, corporations previously subject to those taxes are subject to the franchise tax on general business corporations under Article 9-A of the Tax Law.

This TSB-M supplements notice N-00-18, *Utility and TTD corporations now subject to tax under Article 9-A of the Tax Law: Supplement for the 1999 Forms CT-3, CT-3-A, CT-3-S, and CT-3-S-A*, by providing additional information about franchise tax reporting requirements under Articles 9 and 9-A of the Tax Law, including combined franchise tax returns and the New York S election.

Under Article 9-A, the tax is imposed on all domestic corporations for the privilege of existing as a corporation in New York State and on every foreign corporation for the privilege of doing business, employing capital, owning or leasing property in a corporate or organized capacity, or maintaining an office in New York State. (Certain corporations are exempt from taxation under Article 9-A. For additional information regarding corporations not subject to tax, see Section 1-3.4 of the Business Corporation Franchise Tax regulations.)

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. Utilities and TTD corporations subject to Article 32 should call us at our Business Tax Information Center: 1 800 972-1233.

*A domestic corporation* is a corporation incorporated by or under the laws of the State or colony of New York State.

*A foreign corporation* is a corporation that is not a domestic corporation.

## **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.

*Utility corporations* include corporations, joint-stock companies and associations formed for or principally engaged in the business of supplying water, steam or gas, when delivered through mains or pipes, or electricity, or formed for or principally engaged in two or more of these businesses.

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 former 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.)

## **Franchise tax reporting requirement under Article 9 of the Tax Law**

Utility corporations (except continuing section 186 taxpayers) must file a final CT-186 franchise tax return and, if subject to the MTA surcharge, a final CT-186-M MTA surcharge return on March 15, 2000, covering the year 1999.

TTD corporations must file a final CT-184 franchise tax return and, if subject to the MTA surcharge, final CT-183-M and CT-184-M MTA surcharge returns on March 15, 2000, covering the year 1999. However, since the tax under section 183 is paid in advance, these corporations do **not** need to file a CT-183 franchise tax return on March 15, 2000.

If the CT-183 return originally due on March 15, 2000, has already been filed, a credit or refund may be claimed by filing Form CT-8, *Claim for Credit or Refund of Corporation Tax Paid*. The claim must be filed within three years from the time the original return was filed or two years from the time the tax was paid, whichever is later, or if no return was filed, within two years from the time the tax was paid. If the claim is not filed within the three-year period but is filed within the two-year period, the amount of credit or refund cannot exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. However, any amounts shown on the CT-183 as mandatory first installment and overpayments applied to estimated tax will not be refunded and will be used as the taxpayer's mandatory first installment and estimated tax under Article 9-A (see the *Transitional provisions* section on page 7).

## **Franchise tax reporting requirement under Article 9-A of the Tax Law**

Beginning January 1, 2000, utility corporations (except continuing section 186 taxpayers) and TTD corporations will be subject to tax under Article 9-A for a tax year beginning January 1, 2000.

Under Article 9-A, these corporations must file Form CT-3, *Business Corporation Franchise Tax Return* (or Form CT-3-S, *New York S Corporation Franchise Tax Return*, for electing New York S corporations). Utility and TTD corporations should not file Form CT-4, *Business Corporation Franchise Tax Return* (or Form CT-4-S, *New York S Corporation Franchise Tax Return*). Form Packet CT-3-P/CT-4-P contains frequently used forms and instructions for general business corporations. Form packet CT-3-S-P/CT-4-S-P contains frequently used forms and instructions for New York S corporations. (Note: New York S corporations are not subject to the MTA surcharge.)

**Example 1:** *A TTD corporation is subject to tax under Article 9 and has been filing New York State Corporation Franchise Tax Returns CT-183/CT-184. The corporation is also subject to the MTA surcharge. The corporation will become subject to tax under Article 9-A beginning on January 1, 2000. No CT-183 is due on March 15, 2000, for the year 2000. It will be required to file a final CT-184, CT-183-M and CT-184-M on March 15, 2000, for the year 1999. The corporation's taxable year for federal income tax purposes is a calendar year. Accordingly, its first taxable year under Article 9-A is the calendar year 2000, and its first franchise tax return will be due under Article 9-A on March 15, 2001, for the calendar year 2000.*

**Example 2:** *A utility corporation is subject to tax under Article 9 and has been filing New York State Utility Corporation Franchise Tax Return CT-186. The corporation is also subject to the MTA surcharge. The corporation is not a continuing section 186 taxpayer. The corporation will become subject to tax under Article 9-A beginning on January 1, 2000. It will be required to file a final CT-186 and CT-186-M on March 15, 2000, for the year 1999. The corporation's taxable year for federal income tax purposes is a calendar year. Accordingly, its first taxable year under Article 9-A is the calendar year 2000, and its first franchise tax return will be due under Article 9-A on March 15, 2001, for the calendar year 2000.*

Under Article 9-A, certain related general business corporations may be permitted or required to file combined reports or returns if required conditions are met. For information concerning these requirements, refer to Subpart 6-2 of the Business Corporation Franchise Tax Regulations.

Combined Article 9-A corporations must file Form CT-3-A, *General Business Corporation Combined Franchise Tax Return*, or Form CT-3-S-A, *New York S Corporation Combined Franchise Tax Return*. Form packet CT-3-A-P contains frequently used forms and instructions for general business corporations filing a combined franchise tax return. Form packet CT-3-S-A-P contains frequently used forms and instructions for New York S corporations filing a combined franchise tax return.

### **Due dates for returns under Article 9-A**

The first franchise tax returns under Article 9-A for corporations whose taxable year for federal income tax purposes is a calendar year are due on March 15, 2001. A corporation whose taxable year for federal income tax purposes is a fiscal year will have a short taxable year beginning on January 1, 2000, and ending on the same date its federal fiscal year ends in 2000. The first franchise tax returns under Article 9-A for these short periods are due 2½ months after the end the fiscal year. (For additional information regarding fiscal year taxpayers with tax years ending in 2000, see N-Notice N-00-18.)

(See Tax Law, section 211(1).)

### **Net operating losses under Article 9-A**

Utility and TTD corporations which are taxable under Article 9-A may claim a net operating loss deduction in the same manner as other Article 9-A corporations. However, these corporations are limited to net operating losses sustained in years that they are taxable under Article 9-A.

(See Tax Law, section 208.9(f).)

**Receipts from services performed for transporting or transmitting gas through pipes under 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 the 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 under 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.
- Qualified public utilities, qualified power producers, and qualified pipelines do not make the Article 9-A depreciation modifications which disallow the IRC section 168 ACRS/MACRS deduction and allow a New York depreciation deduction using any method under IRC section 167. Do not complete Form CT-399.

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).)

### **New York S election under Article 9-A**

A corporation that is a federal S corporation (or plans to be a federal S corporation) may elect to be a New York S corporation. A New York S election is available to corporations taxable under Article 9-A (or under Article 32). To make a New York State S election, a corporation must be a federal S corporation. If a federal S election is pending, a New York S election may be filed indicating that a federal S election is pending. A New York S election must be made by filing Form CT-6, *Election by a Federal S Corporation to be Treated as a New York S Corporation*. Generally for an election to be valid for a taxable year, the election must be made at any time during the preceding taxable year, or on or before the fifteenth day of the third month of the taxable year to which the election will apply. If the taxable year to which the election will apply is a short period of less than 2½ months, the corporation will nevertheless have 2½ months following the date it became subject to tax under Article 9-A to make the election. (Corporations seeking relief for late or invalid New York S elections, or retroactively validated federal elections, see TSB-M-98(4)C.)

For additional information about New York S elections, refer to Form CT-6, *Election by a Federal S Corporation to be Treated as a New York S Corporation*; Form CT-6-I, *Instructions for Form CT-6*; and Publication 35, *New York Tax Treatment of S Corporations And Their Shareholders*.

### **Transitional provisions**

Utility and TTD corporations should use the following transitional provisions for their first Article 9-A tax year:

- **Estimated tax and extensions of time to file** — For purposes of Article 9-A safe harbors for estimated tax and extensions of time to file, the *tax shown on the return of the taxpayer for the preceding tax year* is the tax shown on the taxpayer's return under section 186, or the sum of the taxes shown on the taxpayer's returns under sections 183 and 184, for the tax year ending on December 31, 1999. For section 186, this is the tax shown on the CT-186 franchise tax return due on March 15, 2000. For section 183, this is the tax shown on the CT-183 franchise tax return due on March 15, 1999. (However, if the taxpayer has filed the CT-183 return that was originally due on March 15, 2000, the tax shown on that return should be used.) For section 184, this is the tax shown on the CT-184 franchise tax return due on March 15, 2000. Also, the amount of MTA tax surcharge for a taxpayer's previous tax year is the surcharge shown on the taxpayer's return under section 186-b or the sum of the surcharges shown on the taxpayer's returns under sections 183-a and 184-a for the tax year ending on December 31, 1999, that was due on March 15, 2000. For additional information about declarations and payments of estimated tax, see subparts 7-2 and 7-3 of the Business Corporation Franchise Tax regulations.
- **Overpayments of Article 9 tax** — For purposes of application of overpayments of Article 9-A tax against tax liability or estimated tax, any amount of overpayment of tax or a tax surcharge claimed on a taxpayer's return under sections 186, 186-b, 183, 183-a, 184, or 184-a for the tax year ending on December 31, 1999, is treated as if it were an overpayment under Article 9-A. For section 183, this is the amount of overpayment of tax claimed on the CT-183 return due on March 15, 1999. (However, if the taxpayer has filed the CT-183 return that was originally due on March 15, 2000, the overpayment of tax claimed on that return will be used.) For sections 183-a, 184, 184-a, or 186, this is the amount of overpayment of tax or tax surcharge claimed on the CT-183-M, CT-184, CT-184-M, or CT-186 return due on March 15, 2000.

- **Mandatory first installment** — Any amount of mandatory first installment of estimated tax shown on a taxpayer’s return under sections 186, 186-b, 183, 183-a, 184, or 184-a for the tax year ending on December 31, 1999, is treated as if it were a mandatory first installment under Article 9-A of the Tax Law. For section 183, this is the amount of mandatory first installment shown on the CT-183 return due on March 15, 1999. (However, if the taxpayer has filed the CT-183 return that was originally due on March 15, 2000, the mandatory first installment shown on that return will be used.) For sections 183-a, 184, 184-a, or 186, this is the amount of mandatory first installment shown on the CT-183-M, CT-184, CT-184-M, or CT-186 return due on March 15, 2000.
  
- **Credit carryovers** — Any portion of the following credits under Article 9 of the Tax Law — the special additional mortgage recording tax credit under section 187 (Form CT-43), the credit for employment of persons with disabilities under section 187-a (Form CT-41), and the alternative fuels credit under section 187-b (Form CT-40) — that is not applied against the tax due under Article 9 for any tax year ending on or before December 31, 1999, may be claimed as a special additional mortgage recording tax credit, a credit for employment of persons with disabilities, and an alternative fuels credit, respectively, under Article 9-A of the Tax Law.
  
- **Empire zone employment incentive credit (EZ-EIC) and the employment incentive credit (EIC)** — For any Article 9-A taxpayer that claims an empire zone employment incentive credit or employment incentive credit for a fiscal tax year ending before December 31, 2001, or for the 2001 calendar tax year, for purposes of the employment level comparison required under these credits, the phrase “ the taxable year immediately preceding the taxable year for which” the empire zone investment credit or the investment tax credit is allowed means the taxpayer’s taxable year under sections 183, 184 and 186 of the Tax Law ending on December 31, 1999.

(See Ch.63. L.2000, Part Y, section 20.)