

## **Summary of Insurance Corporation Tax Legislative Changes Enacted in 2003**

**Unless otherwise noted, the following changes are effective for tax years beginning on or after January 1, 2003.**

### **Non-life insurance corporations**

#### **Non-life insurance corporations subject to a new franchise tax based solely on premiums**

Non-life insurance corporations are no longer subject to the franchise tax imposed under section 1501 of the Tax Law, and the additional franchise tax imposed under section 1510 of the Tax Law, as these sections are limited by section 1505 of the Tax Law. Instead, non-life insurance corporations are subject to the franchise tax imposed under section 1502-a of the Tax Law, based solely on gross direct premiums, less return premiums. The tax is imposed on non-life insurance corporations for the privilege of exercising their corporate franchise or for carrying on business in a corporate or organized capacity within New York State. The franchise tax is calculated in the same manner as the additional franchise tax based on premiums under section 1510(a) of the Tax Law, except that the tax rate is:

- 1.75% for accident and health premiums; and
- 2.00% for all other premiums.

In no event may the tax imposed under section 1502-a of the Tax Law, before the application of tax credits, be less than \$250.

(Tax Law, section 1502-a)

#### **Metropolitan Transportation Business Tax (MTA) surcharge**

The computation of the MTA surcharge and the MCTD allocation percentage for non-life insurance corporations has changed. The MTA tax surcharge is equal to the tax imposed under section 1502-a of the Tax Law, after the deduction of any credits allowed under Article 33 of the Tax Law, as allocated to the MCTD as described below and multiplied by the MTA surcharge rate of 17%.

The MCTD allocation percentage for non-life insurance corporations is calculated by dividing (1) the direct premiums that would be subject to tax under the terms of section 1510 that are written on risks located or resident in the MCTD, by (2) the direct premiums that would be subject to tax under the terms of section 1510 written on risks located or resident in New York State. MCTD direct premiums include premiums that are written, procured, or received in the MCTD on business that cannot be specifically assigned as located or resident in an area of New York State

outside the MCTD, or in another state(s). However, in the case of special risk premiums, the numerator only includes those premiums written, procured or received in the MCTD on property or risks located or resident in the MCTD.

(Tax Law, section 1505-a(a)(2))

### **Non-life insurance corporation filing requirements**

Non-life insurance corporations are required to file Form CT-33-NL, *Non-life Insurance Corporation Franchise Tax Return*. Non-life insurance corporations subject to the MTA surcharge are required to file Form CT-33-M, *Insurance Corporation MTA Surcharge Return*.

Non-life insurance corporations are not permitted and will not be required to file a return on a combined basis with other insurance corporations.

### **Qualified empire zone enterprise (QEZE) tax reduction credit**

The QEZE tax reduction credit is available to non-life insurance corporations subject to tax under section 1502-a of the Tax Law. The amount of the QEZE tax reduction credit is the product of the following: (1) the benefit period factor, (2) the employment increase factor, (3) the zone allocation factor, and (4) the tax factor. The tax factor is the larger of the franchise tax determined under paragraphs (1) and (3) of subdivision (a) of section 1502 of the Tax Law (the tax on entire net income or the tax on entire net income plus compensation). Since non-life insurance corporations are subject to the franchise tax based solely on premiums, non-life insurance corporations that claim the QEZE tax reduction credit must calculate a pro-forma tax factor for the tax year the credit is claimed. This is done utilizing Form CT-33, *Life Insurance Corporation Franchise Tax Return*, and its instructions for both the calculation of the tax on entire net income and the tax on entire net income plus compensation.

(Tax Law, section 16(f)(1))

### **Estimated tax payments**

All non-life insurance corporations whose preceding year's tax, exclusive of the MTA surcharge, exceeds \$1,000 are required to pay a mandatory first installment of estimated tax with the tax return required to be filed for the preceding tax year, or with the application for extension of time to file that return. Additionally, all non-life insurance corporations that are subject to the mandatory first installment and that are doing business in the MCTD are also required to make a mandatory first installment of estimated tax for the MTA surcharge

For estimated tax purposes and for purposes of obtaining an automatic extension of time to file, *the tax shown on the return of the taxpayer for the preceding tax year* is the tax shown on the non-life insurance corporation's return under Article 33 for both calendar and fiscal years beginning in 2002. Also, the amount of MTA tax surcharge for a non-life insurance corporation's preceding tax year is the surcharge shown on the non-life insurance corporation's return under section 1505-a of Article 33 for both calendar and fiscal years beginning in 2002.

The mandatory first installment remains at 30% of the preceding year's tax for non-life insurance corporations subject to the tax under section 1502-a of the Tax Law, if the preceding year's tax, exclusive of the MTA surcharge, exceeds \$100,000. The mandatory first installment remains at 25% of the preceding year's tax for non-life insurance corporations subject to the tax under section 1502-a of the Tax Law, if the preceding year's tax, exclusive of the MTA surcharge, exceeds \$1,000 but does not exceed \$100,000. Additionally, non-life insurance corporations that are required to pay a mandatory first installment and that are subject to the MTA surcharge under section 1505-a of the Tax Law are also required to calculate their estimated tax for the MTA surcharge using the same applicable percentages.

The remaining estimated tax payments are adjusted so the total payments do not exceed 100% of the estimated tax due.

### **New definition of *large corporation* for non-life insurance corporations for purposes of computing additions for underpayment of estimated tax**

There are special rules for determining the amount of the underpayment penalty for the failure of large corporations to pay estimated tax. The Tax Law was amended for purposes of a non-life insurance corporation subject to the tax under section 1502-a of Article 33 of the Tax Law to provide that a *large corporation*, is one that either had:

- allocated entire net income of at least \$1 million for any one of the three tax years immediately preceding the tax year involved, if one of the three immediately preceding years begins before January 1, 2003, **or**
- direct premiums subject to the premiums tax under section 1502-a of Article 33 of the Tax Law exceeding \$3,750,000 for any one of the three immediately preceding tax years, if one of the three immediately preceding years begins on or after January 1, 2003.

(Tax Law, section 1085(e)(1))

### **Life insurance corporations**

#### **Life insurance corporations subject to a new floor limitation on tax**

Life insurance corporations remain subject to the franchise taxes imposed under sections 1501 and 1510 of the Tax Law as limited by section 1505. However, section 1505 of the Tax Law has been amended to provide for a floor limitation on tax for life insurance corporations. The total franchise tax on life insurance corporations, computed prior to the application of any tax credits, cannot be less than 1.5% of the premiums (*the floor limitation on tax*) subject to tax under section 1510 of the Tax Law.

(Tax Law, section 1505(b))

## **Life insurance corporation filing requirements**

Life insurance corporations are required to file either Form CT-33 or Form CT-33-A. These forms have been renamed *Life Insurance Corporation Franchise Tax Return* and *Life Insurance Corporation Combined Franchise Tax Return*, respectively. Life insurance corporations subject to the MTA surcharge are required to file Form CT-33-M, *Insurance Corporation MTA Surcharge Return*.

## **Other amendments**

The Tax Law has also been amended to provide for entire net income (ENI) modifications with respect to certain royalty payments made or received from a related member or members and for ENI modifications due to decoupling from the federal bonus depreciation. For additional information, refer to TSB-M-03(5)C, *Summary of Corporation Tax Legislative Changes Enacted in 2003*, and TSB-M-03(8)C, *Supplemental Summary of Corporation Tax Legislative Changes Enacted in 2003*.

(Tax Law, sections 1503(b)(1)(R), 1503(b)(2)(T), 1503(b)(14), 1503(b)(15) and 1503(b)(16))

## **Legislative amendments affecting both life and non-life insurance corporations**

### **Empire zone (EZ) wage tax credit, zone equivalent area (ZEA) wage tax credit and EZ capital tax credit limitations**

The amount of EZ wage tax credit, ZEA wage tax credit and EZ capital tax credit, including carryovers, deducted from the franchise tax on insurance corporations for any taxable year is subject to a limitation. This limitation has changed. For a life insurance corporation the amount of each of these credits, including credit carryovers, deducted from its franchise tax for any tax year may not, in the aggregate, exceed 50% of the **lesser** of the following:

- the limitation on tax pursuant to section 1505(a) of the Tax Law, which equals 2% of the premiums subject to tax under section 1510 of the Tax Law; **or**
- the **greater** of:
  - ▶ the sum of the taxes imposed under sections 1501 (the highest of the four tax bases, plus the tax on subsidiary capital allocated to New York) and 1510 of the Tax Law (the additional franchise tax on premiums); **or**
  - ▶ the floor limitation on tax pursuant to section 1505(b) of the Tax Law, which equals 1.5% of the premiums subject to tax under section 1510 of the Tax Law.

For a non-life insurance corporation, the amount of each of these credits, including credit carryovers, deducted from its franchise tax for any tax year may not, in the aggregate, exceed 50% of the tax imposed under section 1502-a of the Tax Law.

(Tax Law, sections 1511(g)(4) and 1511(h)(2))

### **Surcharge retaliatory tax credit**

The four million dollar limitation on the total amount of the surcharge retaliatory tax credit claimed in any *surcharge taxable year* and the *limitation date* provision have been repealed. Accordingly, the surcharge retaliatory tax credit may now be claimed for taxes paid to other states regardless of the *limitation date* for a *surcharge taxable year*. The surcharge retaliatory tax credit is still computed and claimed on Form CT-33-M, *Insurance Corporation MTA Surcharge Return*.

(Tax Law, section 1505-a)

### **Legislative amendments affecting both life and non-life insurance corporations, and captive insurance companies**

#### **New deduction for certain reinsurance premiums**

Effective for tax years beginning on or after January 1, 1990, section 1510(c) of the Tax Law has been amended to allow a deduction from gross direct premiums for certain reinsurance premiums received from insurers not authorized by the Superintendent of Insurance to transact business in this state. For additional information, refer to TSB-M-03(3)C, *New Deduction Under Article 33 of the Tax Law for Certain Reinsurance Premiums, and Limited Opportunity for Refund of Tax Paid on These Premiums*; and TSB-M-03(3.1)C, *Correction to TSB-M-03(3)C, New Deduction Under Article 33 of the Tax Law for Certain Reinsurance Premiums, and Limited Opportunity for Refund of Tax Paid on These Premiums*.

(Tax Law, section 1510(c)(3)(B))

#### **Other amendments**

The Tax Law has also been amended to remove the fixed minimum interest rate payable on overpayments of tax, to provide for filing fees for limited liability companies and limited liability partnerships, and to require estimated tax payments for partnerships, limited liability companies, and New York S corporations. For additional information, refer to TSB-M-03(5)C, *Summary of Corporation Tax Legislative Changes Enacted in 2003*.

(Tax Law, sections 1096(e)(1), 171, twenty-sixth(a), 658(c)(3), 658(c)(4), 685(c), and 686(i))