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

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Corporation Tax
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Summary of Corporation Tax Legislative Changes Enacted in 2005

This memorandum contains brief summaries of the corporation tax changes that are part of the 2005-2006 New York State Budget bills (Chapters 61, 63, and 161 of the Laws of 2005.)

Single factor business allocation percentage for certain Article 9-A filers (Article 9-A)

The Tax Law has been amended to provide a new method for computing the business allocation percentage (BAP) for all Article 9-A taxpayers, other than taxpayers principally engaged in the conduct of a railroad or trucking business or taxpayers principally engaged in the conduct of aviation (excluding air freight forwarders acting as principals and like indirect air carriers). When calculating the tax on the entire net income base, the minimum taxable income base, and the capital base, these affected Article 9-A taxpayers will allocate their business income, alternative business income and business capital to New York State as follows:

For tax years beginning on or after January 1, 2006, and before January 1, 2007, taxpayers will use a 60% weighted receipts factor, a 20% weighted property factor, and a 20% weighted payroll factor. Thus in computing the BAP, the receipts factor will be multiplied by three and added to the property factor and the payroll factor and the sum will be divided by five.

For tax years beginning on or after January 1, 2006, and before January 1, 2007, if either the property or payroll factor is missing, the receipts will be multiplied by three and added to the property or payroll factor, whichever is not missing, and the sum will be divided by four. If the receipts factor is missing the property or payroll factors are added and the sum is divided by two. A factor is not missing merely because its numerator is zero, but a factor is missing if both its numerator and its denominator are zero.

For tax years beginning on or after January 1, 2007, and before January 1, 2008, taxpayers will use an 80% weighted receipts factor, a 10% weighted property factor, and a 10% weighted payroll factor. Thus in computing the BAP, the receipts factor will be multiplied by eight and added to the property factor and the payroll factor and the sum will be divided by ten.

For tax years beginning on or after January 1, 2007, and before January 1, 2008, if either the payroll or property factor is missing, the receipts will be multiplied by eight and added to the property or payroll factor, whichever is not missing, and the sum will be divided by nine. If the receipts factor is missing the property or payroll factors are added and the sum is divided by two.

For tax years beginning on or after January 1, 2008, the receipts factor is the business allocation percentage.

The method of allocation for purposes of calculating the MTA surcharge for these affected taxpayers will remain unchanged using single-weighted receipts, property, and payroll factors.

The following table shows how each factor is weighted when computing the BAP:

	For tax years beginning on or after January 1, 2006, and before January 1, 2007		For tax years beginning on or after January 1, 2007, and before January 1, 2008	
Un-weighted BAP factors (as calculated on franchise tax returns)	% of weight	Factor weights for use in computing BAP	% of weight	Factor weights for use in computing BAP
Receipts %	60% = 3/5	3	80% = 8/10	8
Property %	20% = 1/5	1	10% = 1/10	1
Payroll %	20% = 1/5	1	10% = 1/10	1
Total factors after weighting	100% = 5/5	5	100% = 10/10	10

Example 1: Corporation A's BAP factors computed before weighting are as follows:

	Within NYS	**Everywhere**	**Un-weighted BAP factors**
Receipts	$250,000	$1,000,000	25%
Property	$55,000	$100,000	55%
Payroll	$90,000	$200,000	45%

Corporation A's BAP for its tax year beginning on or after January 1, 2006, and before January 1, 2007, is computed as follows:

Un-weighted BAP factors	**Multiply by**	**Factor weights**	**Weighted factors**
25% receipts factor	X	3	75%
55% property factor	X	1	55%
45% payroll factor	X	1	45%
Totals		5	175%

Total weighted factors	**Divided by**	**Totals factor weights**	**BAP**
175%	÷	5	35%

Example 2: Corporation B's BAP factors computed before weighting are as follows:

	Within NYS	**Everywhere**	**Un-weighted BAP factors**
Receipts	$250,000	$1,000,000	25%
Property	$55,000	$100,000	55%
Payroll	$0	$200,000	0%*

* Corporation B has a 0% payroll factor because it has no employees within New York State but has employees outside New York State.

Corporation B's BAP for its tax year beginning on or after January 1, 2006, and before January 1, 2007, is computed as follows:

Un-weighted BAP factors	Multiply by	Factor weights	Weighted factors
25% receipts factor	X	3	75%
55% property factor	X	1	55%
0% payroll factor	X	1	0%
Totals		5	130%

Total weighted factors	Divided by	Totals factor weights	BAP
130%	÷	5	26%

Example 3: Corporation C's BAP factors computed before weighting are as follows:

	Within NYS	Everywhere	Un-weighted BAP factors
Receipts	$250,000	$1,000,000	25%
Property	$55,000	$100,000	55%
Payroll	$0	$0	None*

* Corporation C has no payroll factor since it has no employees either within or without New York State.

Corporation C's BAP for its tax year beginning on or after January 1, 2006, and before January 1, 2007, is computed as follows:

Un-weighted BAP factors	Multiply by	Factor weights	Weighted factors
25% receipts factor	X	3	75%
55% property factor	X	1	55%
no payroll factor	X	0	none
Totals		4	130%

Total weighted factors	Divided by	Totals factor weights	BAP
130%	÷	4	32.5%

Example 4: Corporation D's BAP factors computed before weighting are as follows:

	Within NYS	Everywhere	Un-weighted BAP factors
Receipts	$250,000	$1,000,000	25%
Property	$55,000	$100,000	55%
Payroll	$0	$0	None*

* Corporation D has no payroll factor since it has no employees either within or without New York State.

Corporation D's BAP for its tax year beginning on or after January 1, 2007, and before January 1, 2008, is computed as follows:

Un-weighted BAP factors	**Multiply by**	**Factor weights**	**Weighted factors**
25% receipts factor	X	8	200%
55% property factor	X	1	55%
no payroll factor	X	0	none
Totals		9	255%

Total weighted factors	**Divided by**	**Totals factor weights**	**BAP**
255%	÷	9	28.33%

(Tax Law, section 210.3(A)(10))

Single factor allocation for certain Article 32 filers (Article 32)

The Tax Law was amended to provide a new allocation percentage for those 65% or more owned subsidiaries of banks and bank holding companies subject to tax under Article 32 by reason of Tax Law section 1452(a)(9) that substantially provide management, administrative, and/or distribution services to an investment company. The new allocation percentage is as follows:

For taxable years beginning on or after January 1, 2006, and before January 1, 2007, these subsidiaries will use a 17% weighted payroll factor, a 50% weighted receipts factor, and a 33% weighted deposits factor.

For taxable years beginning on or after January 1, 2007, and before January 1, 2008, these subsidiaries will use a 10% weighted payroll factor, a 70% weighted receipts factor, and a 20% weighted deposits factor.

For taxable years beginning on or after January 1, 2008, these subsidiaries will use a 100% weighted receipts factor, and the payroll and deposits factor will be eliminated.

The terms "management services," "administrative services," "distribution services," and "investment company" are defined in Tax Law section 1454(a)(2)(G). (See TSB-M-00(5)C and TSB-M-88(9)C.)

A corporation "substantially" provides management, administrative, and/or distribution services to an investment company if 80% or more of its gross receipts are from providing such services.

A corporation that qualifies to use the allocation percentage described above can file a combined report only with other corporations subject to tax under Article 32 that qualify to use the same allocation percentage.

The amendment does not apply to the allocation percentage used to compute the MTA surcharge. Therefore, the MTA allocation percentage will continue to be computed by dividing gross income within the MCTD by gross income within New York State.

To determine the allocation percentage:

1) Multiply each un-weighted factor by the appropriate weight (with such weights dependent on the taxable year);

2) Add the products obtained in Step 1;

3) Divide the sum obtained in Step 2 by 100. (See Example 1 below.) If a factor is missing, the sum obtained in Step 2 will be divided by the sum of the appropriate weights of the factors that are not missing. A factor is not missing merely because its numerator is zero, but a factor is missing if both the numerator and its denominator are zero. (See Example 3 below.)

Example 1: This illustrates the computation of the allocation percentage for a tax year beginning on or after January 1, 2006, and before January 1, 2007.

Assume Corporation A has a payroll factor of 45%, a receipts factor of 25%, and a deposits factor of 55%.

Corporation A's allocation percentage is computed as follows:

Un-weighted factors	**Multiply by**	**Factor weights***	**Weighted factors**
.45 payroll	X	17	7.65
.25 receipts	X	50	12.50
.55 deposits	X	33	18.15
Totals		100	38.30

Total weighted factors	**Divided by**	**Total factor weights**	**Allocation percentage**
38.30	÷	100	.383 or 38.3%

* When computing the allocation percentage for a tax year beginning on or after January 1, 2007, and before January 1, 2008, the factor weights would be as follows: 10 for payroll; 70 for receipts; and 20 for deposits.

Example 2: This illustrates the computation of the allocation percentage for a tax year beginning on or after January 1, 2006, and before January 1, 2007, when one of the factors is zero.

Assume Corporation B has a payroll factor of 0%, a receipts factor of 25%, and a deposits factor of 55%. Corporation B has a 0% payroll factor because it has no employees within New York State but has employees outside New York State.

Corporation B’s allocation percentage is computed as follows:

Un-weighted factors	Multiply by	Factor weights*	Weighted factors
0 payroll	X	17	0
.25 receipts	X	50	12.50
.55 deposits	X	33	18.15
Totals		100	30.65

Total weighted factors	Divided by	Total factor weights	Allocation percentage
30.65	÷	100	.3065 or 30.65 %

* When computing the allocation percentage for a tax year beginning on or after January 1, 2007, and before January 1, 2008, the factor weights would be as follows: 10 for payroll; 70 for receipts; and 20 for deposits.

Example 3: This illustrates the computation of the allocation percentage for a tax year beginning on or after January 1, 2006, and before January 1, 2007, when there is a missing factor.

Assume Corporation C has a payroll factor of 45%, a receipts factor of 25%, and no deposits factor. Corporation C has no deposits factor because it has no deposits either within or outside New York State.

Corporation C’s allocation percentage is computed as follows:

Un-weighted factors	Multiply by	Factor weights*	Weighted factors
.45 payroll	X	17	7.65
.25 receipts	X	50	12.50
No deposits factor	X	none	none
Totals		67	20.15

Total weighted factors	Divided by	Total factor weights	Allocation percentage
20.15	÷	67	.3007462 or 30.0746%

* When computing the allocation percentage for a tax year beginning on or after January 1, 2007, and before January 1, 2008, the factor weights would be as follows: 10 for payroll; 70 for receipts; and 20 for deposits.

(Tax Law, section 1454(b)(1-a))

Definition of small business taxpayer amended and small business taxpayer rate on entire net income (ENI) base reduced (Article 9-A)

The definition of a small business taxpayer has been amended. The amendment increases the amount of entire net income (ENI) a business may have and still qualify as a small business taxpayer. As a result, for tax years beginning on or after January 1, 2005, a *small business taxpayer* means a taxpayer (i) which has ENI of not more than **$390,000** for the taxable year; (ii) which constitutes a small business as defined in section 1244(c)(3) of the Internal Revenue Code (without regard to the second sentence of subparagraph (A) thereof) as of the last day of the taxable year; and (iii) which is not part of an affiliated group, as defined in section 1504 of the Internal Revenue Code, unless such group, if it had filed a report under Article 9-A of the Tax Law on a combined basis, would have itself qualified as a small business taxpayer.

In addition to the change in this definition, for tax years beginning on or after January 1, 2005, the small business taxpayer rate used to compute the tax on the ENI base has been reduced. The resultant rate and tax computation are as follows:

- If the ENI base does not exceed $290,000, the tax rate is 6.5% of the ENI base.
- If the ENI base exceeds $290,000 but does not exceed $390,000, the tax is computed by adding the following amounts:

    1. $18,850 (6.5% of $290,000 the ENI base) plus,
    2. 7.5% of the ENI base over $290,000 plus,
    3. 7.25% of the ENI base over $350,000.

The tax rate reductions for small business taxpayers described above do not apply when computing the MTA surcharge. Amendments made to the Tax Law in 1998 provide that for tax years beginning on or after July 1, 1998, the MTA surcharge is to be computed as if tax rate changes have not occurred. Therefore, the MTA surcharge and the amount of estimated tax payments of MTA surcharge are to be computed using the small business taxpayer ENI base tax rates in effect for the period July 1, 1997, through June 30, 1998.

(Tax Law, sections 210.1(a) and (f))

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

The New York State low-income housing tax credit program was established in 2000 to promote the construction and rehabilitation of low-income housing in New York State. The credit is similar to the federal low-income housing credit and is administered by the New York State Division of Housing and Community Renewal. The Public Housing Law has been amended to increase the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects from $6 million to $8 million per year.

This provision takes effect immediately.

(Public Housing Law, section 22(4))

Green buildings credit (Articles 9, 9A, 32, and 33)

The green buildings tax credit provides incentives for the construction, rehabilitation and maintenance of buildings with high environmental standards and energy efficiency through the use of environmentally preferable building materials and energy technologies that are renewable and clean.

Section 19 of the Tax Law, providing for the green buildings credit, has been amended to extend the program and to provide an additional $25 million in credits over the life of the extended period. During this extended period (second time period) initial credit component certificates may be issued by the Department of Environmental Conservation for the years 2005 through 2009. If the certificates issued during the second period (2005-2009) do not total $25 million, then the second period will be extended through 2010. Taxpayers may claim the credit for the second time period for taxable years 2006 through 2014. The total amount of the credit allocated with respect to a particular certificate may not exceed $2 million. However, a taxpayer who is the owner or tenant of more than one building may obtain a certificate for each building with the aggregate amount of credit allocated for each certificate being $2 million.

Under the original enactment of the Green Building Tax Credit program the eligible period during which initial credit component certificates could have been issued was during the years 2001 through 2004, with taxpayers being allowed to claim the credit for five taxable years during the period 2001 through 2009. The first step in obtaining eligibility for the green buildings tax credit is for the taxpayer to apply to the Department of Environmental Conservation for the initial credit component certificate. The certificate provides for a period of five taxable years during which the credit may be claimed and sets forth the amount of credit that may be claimed for each taxable year in the five year period.

The amendment provides that if taxpayers issued credit component certificates during either the first period (2001-2004) or the second period (2005-2009) are unable to claim any amount of credit set forth on the certificate, the amount of that unclaimed credit may be allocated to another taxpayer that has already been issued a credit component certificate or the unclaimed credit may be allocated to a new applicant for a credit component certificate.

Taxpayers who were issued an initial credit component certificate for the eligible period prior to the amendment (2001-2004) may not be issued an initial credit component certificate with respect to the same building for the second eligible period (2005-2009).

The provision takes effect immediately and applies as described above.

(Tax Law, sections 19, 187-d, 210.31, 1456(m), and 1511(o))

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 for 2005. This extension is denoted as *Certified Capital Company Program Five* (Program Five).

Insurance companies that participate in Program Five can invest in CAPCOs and collectively claim tax credits totaling up to $60 million. The credit must be claimed over ten years with 10% allowed each year. Any credits not used can be carried over for an unlimited number of years. The total credit available in any particular tax year, which is the combination of the 10% 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 Five beginning in 2005. However, they will not be allowed to begin claiming the tax credits until 2007.

The maximum amount of credit allowable for investments in one or more CAPCOs by a particular insurance company or a group of affiliated insurance companies in any one year will be $8 million in Program Five. However, if the aggregate amount of certified capital ($60 million) has not been reached sixty days prior to the end of the year, the $8 million limit will cease to apply for the remainder of the year.

The Superintendent of Insurance is required to start accepting applications for certification for Program Five by July 1, 2005.

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

Transferability of CAPCO credits (Article 33)

The Tax Law has been amended to allow an insurance company that is a certified investor to transfer its unused CAPCO credits, in whole or in part, to any affiliate within an affiliated group of taxpayers that are subject to tax under Article 33. The transfer of the credit will not affect the time schedule for claiming the credit transferred. Any credit that is required to be recaptured will be the responsibility of the taxpayer who actually claimed the credit. The claim of a transferee will be permitted in the same manner and subject to the same provisions and limitations of section 11 of the Tax Law as applied to the taxpayer to whom the credit was originally allowed.

The insurance corporation making the transfer must notify the Tax Department and the New York State Insurance Department that a transfer has been made within 45 days of the date of the transfer.

The term affiliated group means an affiliated group as defined in section 1504 of the Internal Revenue Code except that references to “at least eighty percent” in section 1504 are read as “more than fifty percent” and includes insurance companies subject to taxation under section 810 of the Internal Revenue Code.

Once the insurance corporation has properly notified the Department of Taxation and Finance and the New York State Insurance Department of the transfer, the affiliate may claim a credit or refund of the CAPCO credit transferred by filing Form CT-8, *Claim for Credit or Refund of Corporation Tax Paid*, for returns filed in tax years 2003 and 2004**.** A claim for credit or refund must be filed within three years from the date the return was filed, or two years from the date the tax was paid, whichever is later.

This amendment takes effect immediately and applies to all credits transferred on or after August 1, 2003.

(Tax Law, section 1511(k)(9))

Limited liability company (LLC), limited liability partnership (LLP), and single-member LLC disregarded entity filing fees extended for tax years 2005 and 2006

The increased filing fees for LLCs and LLPs that were enacted in 2003 have been extended for tax years beginning in 2005 and 2006.

Accordingly, the filing fee for LLCs and LLPs that are treated as partnerships for federal income tax purposes and that have income, gain, loss or deductions derived from New York sources remains at $100 multiplied by the total number of members in the LLC or number of partners in the LLP. Also, the minimum and maximum filing fee amounts remain at $500 and $25,000 respectively. In addition, the new law imposes the partnership filing fee on an LLC with more than one member that is a disregarded entity for federal income tax purposes (e.g., an LLC owned solely by a husband and wife who are residents of a community property state that can elect disregarded status for federal purposes under Revenue Procedure 2002-69).

Also extended for tax years beginning in 2005 and 2006 is the $100 filing fee payable by a single-member LLC (SMLLC) that is a disregarded entity for federal income tax purposes and that has income, gain, loss, or deductions derived from New York sources. The return and payment are due within 30 days of the last day of the tax year.

(Tax Law, section 658(c)(3))

Capital base tax limitation increase (Article 9-A)

For tax years beginning on or after January 1, 2005, the maximum amount of the capital base tax imposed under Article 9-A has increased from $350,000 to $1,000,000 for all taxpayers except manufacturers.

For purposes of the capital base tax, a manufacturer is defined as a taxpayer that during the tax year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing.

In addition, for purposes of computing the capital base tax for a combined report, the combined group is considered a "manufacturer" only if the combined group during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing.

A taxpayer or a combined group is principally engaged in the activities described above if, during the taxable year, more than 50% of the gross receipts of the taxpayer or combined group are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts are eliminated.

The capital base tax limitation increase described above does not apply when computing the MTA surcharge. Amendments made to the Tax Law in 1998 provide that for tax years beginning on or after July 1, 1998, the MTA surcharge is to be computed as if tax rate changes have not occurred. The MTA surcharge and the amount of estimated tax payments of MTA surcharge are to be computed using the franchise tax rates in effect for the period July 1, 1997, through June 30, 1998. Therefore, an Article 9-A taxpayer that pays more than $350,000 in capital base tax will compute its MTA surcharge and the amount of estimated tax payments of MTA surcharge on $350,000 of capital base tax.

(Tax Law, section 210.3(a)(10))

Tax Shelters (Articles 9, 9-A, 32, and 33)

The Tax Law has been amended to provide new reporting requirements with respect to the disclosure of information relating to transactions that present the potential for tax avoidance (a tax shelter). These new reporting requirements are similar to the tax shelter disclosure requirements for federal income tax purposes. Separate reporting requirements are imposed on those who utilize tax shelters and those who promote the use of tax shelters. The amendments also impose penalties for nondisclosure and the underpayment of taxes due to participation in these transactions, extend the statute of limitations for assessments relating to these transactions, and create a voluntary compliance initiative to allow taxpayers to report and pay underreported tax liabilities and interest attributable to these transactions with a waiver of penalties. For more information, see TSB-M-05(2)C, *Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*, TSB-M-05(2.1)C, *Supplement to the Disclosure of Certain*

Transactions and Related Information Regarding Tax Shelters, and Publication 671, *New York State Tax Shelter Voluntary Compliance Initiative*.

(Tax Law, sections 25, 1083(c)(11), 1085(k), 1085(k-1), 1085(p), 1085(q), 1085(r), 1085(s), 1085(t))

New York State offsets (Articles 9, 9-A, 32, and 33)

A new section 171-m has been added to the Tax Law to authorize the Commissioner of Taxation and Finance and the Commissioner of Finance of the city of New York to agree to offset certain New York City tax overpayments against New York State debts arising from a warrant filed with the county clerk against an individual, corporation, association, company, partnership, estate, trust, liquidator, fiduciary, or other entity identified in a tax warrant as the judgment debtor for an unpaid tax or other imposition.

A new section 171-n has been added to the Tax Law to authorize the Commissioner of Taxation and Finance to agree with tax administrators of other states to offset a New York State tax overpayment against outstanding tax debts owed by a taxpayer to other claimant states, provided the claimant state grants substantially similar privileges to New York State. *Taxpayer* means an individual, corporation, partnership, limited liability partnership or company, partner, member, manager, estate, trust, fiduciary, or entity, who or which has made an overpayment of any tax administered by the Commissioner.

The outstanding tax debts owed to other claimant states must arise from:

a. an enforceable judgment by a court no longer subject to judicial review,
b. an enforceable determination by an administrative body no longer subject to administrative or judicial review, or
c. an assessment or determination which is final and irrevocably fixed and no longer subject to administrative or judicial review and which has not been delinquent for more than ten years.

These provisions take effect immediately.

(Tax Law, sections 171-m and 171-n)

Qualified emerging technology company (QETC) facilities, operations, and training credit (Article 9-A)

Effective for tax years beginning on or after January 1, 2005, a new tax credit is allowed for an eligible taxpayer that is a qualified emerging technology company (QETC) pursuant to section 3102-e of the Public Authorities Law. The credit applies to corporate taxpayers subject to tax under Article 9-A. To be eligible for this credit taxpayers must have:

- 100 or fewer full-time employees, 75% or more of whom must be employed in New York State,

- a research and development funds to net sales ratio of at least 6% during the tax year, and
- gross revenues (including gross revenues of affiliates and related members) of no more than $20 million for the tax year immediately preceding the year the taxpayer is allowed the credit.

The amount of the credit is equal to the sum (or pro rata share of the sum in the case of a partner in a partnership) of:

(1) 18% of the cost or other basis for federal income tax purposes of research and development property as defined in Tax Law section 210.12(b) that is acquired by the taxpayer by purchase as defined by Internal Revenue Code section 179(d) and placed in service during the tax year. In addition, an eligible taxpayer will also be allowed a credit for 18% of the:

(A) cost or other basis for federal income purposes for property used in the testing or inspection of materials and products,
(B) costs or expenses associated with quality control of the research and development,
(C) fees for the use of sophisticated technology facilities and processes, and
(D) fees for production or eventual commercial distribution of materials and products resulting from the activities of an eligible taxpayer as long as the activities fall under the activities listed in section 3102-e(1)(b) of the Public Authorities Law.

The costs, expenses and fees included under (1), for which this credit is claimed cannot be used in the calculation of any other credit allowed under Article 9-A of the Tax Law.

(2) 9% of qualified research expenses paid or incurred by the taxpayer during the tax year.

(3) qualified high-technology training expenditures paid or incurred by the taxpayer, limited to $4,000 per employee, per year.

The credit may be claimed for four consecutive tax years by an eligible taxpayer. However, if the taxpayer is located in an academic incubator facility and relocates to a nonacademic incubator facility within New York State, the taxpayer may elect to defer the credit to the first taxable year beginning after the relocation. If the election is made, the taxpayer may claim the credit for five consecutive tax years. The amount of the credit allowed may not exceed $250,000 per tax year. The credit allowed under Article 9-A may not reduce the tax for the current year to an amount less than the tax due on the minimum taxable income base or the fixed dollar minimum, whichever is higher. Any amount of credit not deducted in the current tax year may be refunded without interest or applied as an overpayment against the tax due for next tax year. The credit may not be applied against the MTA surcharge.

(Tax Law, section 210.12-G)

Qualified emerging technology company (QETC) employment credit (Article 9-A)

Section 210-12-E(e) of the Tax Law, relating to the qualified emerging technology company employment credit, has been amended. For tax years beginning on or after January 1, 2005, if the amount of the credit exceeds the taxpayer's tax for the year, the excess will be treated as an overpayment of tax to be credited or refunded (without interest). Prior to the amendment, the credit could have been carried over to future years. However, if the taxpayer qualified as a new business, any amount of the credit that exceeded the taxpayer's tax for the year could be treated as an overpayment of tax to be credited or refunded (without interest).

This provision takes effect immediately and applies as described above.

(Tax Law, section 210.12-E(e))

Qualified Empire Zone Enterprise (QEZE) tax credits (Articles 9, 9-A, 32, and 33)

The following is a summary of the changes to the Empire Zones Program resulting from Chapters 63 and 161:

- the effective date for the Empire Zone (EZ) designations has been extended through June 30, 2011;
- each EZ will be designated as either an *investment zone* (IZ), or a *development zone* (DZ);
- effective for taxable years beginning on or after January 1, 2005, a business enterprise first certified prior to August 1, 2002, who has a base period of zero years or whose employment number is zero in the base period will now be subject to an additional employment test;
- effective for taxable years beginning on or after January 1, 2002, the term *related person* includes an entity which would have qualified as a related person to the QEZE if it had not been dissolved, liquidated, merged with another entity or otherwise ceased to exist or operate;
- effective for taxable years beginning on or after January 1, 2005, the QEZE employment number can include employees from a related person only if they were not employed within New York State in the immediately preceding 60 months;
- effective for taxable years beginning on or after January 1, 2005, a business enterprise which is identical in ownership and operation to an existing taxpayer, can qualify as a new business if operating in different counties within New York State (the new business must use the remaining business tax benefit period of the existing taxpayer);

- eligible real property taxes will include property taxes paid by a lessee for taxable years beginning on or after January 1, 2005, under certain circumstances;
- effective for taxable years beginning on or after January 1, 2005, PILOTs (payments in lieu of taxes) do not constitute eligible real property taxes to the extent the payment exceeds a limitation calculation.

In addition to the above changes, there are additional amendments for taxable years beginning on or after January 1, 2005, affecting business enterprises first certified on or after April 1, 2005:

- for purposes of the QEZE employment test, taxpayers will include their employees within the EZs in their statewide employment number;
- in order to meet the employment test, the employment number in the current tax year must exceed the employment number in the base period for both the EZs and the state (including the EZs);
- if a business enterprise has zero base period employment or a base period of zero years, it must qualify as a new business in order to meet the employment test;
- the base period is shortened from five years to four years;
- the benefit period is shortened from fifteen years to ten years;
- the real property tax credit calculation has been amended; and
- the real property tax credit is limited to the greater of the credit amount or the capital investment amount; however, the credit cannot exceed the eligible real property taxes paid.

(Tax Law, sections 14, 15, 16, 187(j), 210.27, 210.28, 1456(o), 1456(p), 1511(r), and 1511(s))

Empire Zone wage tax credit (Articles 9-A, 32, and 33)

The Tax Law has been amended for tax years beginning on or after January 1, 2005, to change the definition of *targeted employee* to conform to the federal Workforce Investment Act of 1998 (P.L. 105-220) and to add to the definition of a targeted employee an honorably discharged member of any branch of the armed forces of the United States. In addition, for a taxpayer certified in an investment zone, the dollar amount of the credit per employee is increased by $500 for each qualifying employee who received wages in excess of $40,000.

For taxable years beginning on or after January 1, 2002, the definition of a *related person* has been expanded under this section to include an entity which would have qualified as a related person if it had not been dissolved, liquidated, merged with another entity, or otherwise ceased to exist or operate.

(Tax Law, sections 210.19, 1456(e), and 1511(g))

Empire Zone capital tax credit (Articles 9-A, 32, and 33)

The Tax Law has been amended for tax years beginning on or after January 1, 2005, to limit the Empire Zone capital tax credit to investments in certified empire zone businesses and contributions to community development projects. The credit for investments in and contributions to zone capital corporations is eliminated for tax years 2005 and after.

(Tax Law, sections 210.20, 1456(d), and 1511(h))

Empire Zone (EZ) investment tax credit, EZ employment incentive credit, and EZ wage tax credit added and QEZE real property tax credit changed for agricultural cooperatives (Article 9, section 185)

For tax years beginning on or after January 1, 2004, agricultural cooperatives subject to tax under Article 9, section 185, which are located in Empire Zones and are certified under Article 18-B of the General Municipal Law may be eligible for an EZ investment tax credit, an EZ employment incentive credit, and an EZ wage tax credit.

In addition, for tax years beginning on or after January 1, 2004, the QEZE real property tax credit was amended to provide that the credit cannot reduce the tax to an amount less than the minimum tax under Article 9, section 185(2).

For more information regarding these credits, refer to the instructions for Form CT-603, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit*, Form CT-601, *Claim for EZ Wage Tax Credit* and CT-606, *Claim for QEZE Credit for Real Property Taxes*.

(Tax Law, sections 187(k), 187(l), and 187(m))

Tax preparer penalties

Section 1085(s) has been added to the Tax Law and provides for a tax preparer penalty in certain instances when there is an understatement of liability due to a position taken by the preparer.

A penalty of up to $1,000 will be imposed upon the tax return preparer if:

1. any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there is not or was not a reasonable belief that the tax treatment in that position was more likely than not the proper treatment,

2. the preparer with respect to the return or claim knew or reasonably should have known of such position, and

3. the position taken was not disclosed as provided in section 1085(k) of the Tax Law, or there was no reasonable basis for the tax treatment of that position.

The penalty of up to $1,000 will not be imposed if it is shown that there is reasonable cause for the understatement and the preparer acted in good faith.

A penalty of up to $5,000 will be imposed upon the tax return preparer if any understatement of liability with respect to any return or claim for refund is due to a willful attempt to understate the liability for tax or any reckless or intentional disregard of rules or regulations by the preparer.

An *understatement of liability* means any understatement of the net amount payable with respect to any tax imposed under Article 9, 9-A, 32, or 33 of the Tax Law or any overstatement of the net amount of credit or refund with respect to any such tax. The tax preparer penalty imposed under section 1085(s) of the Tax Law will not apply if the penalty under section 1085(l) of the Tax Law is imposed on the tax return preparer with respect to such understatement.

These provisions take effect immediately. However, the provisions will expire and be deemed repealed July 1, 2007.

(Tax Law, section 1085(s))