

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-78 (6)C (Rev.)
Corporation Tax
Instructions and Interpretations Section
September 21, 1978

This memorandum supersedes memorandum numbered TSB-M-78(6)C dated June 23, 1978 which should be destroyed.

Subject: Short-Term Notes

For all taxable years beginning before January 1, 1978, short-term notes will be accepted as investment capital or business capital, depending on how the taxpayer treated these notes at the time the return was filed.

Based upon the above, the following audit policy will be implemented:

Amended reports or claims for refund, timely filed, for these same periods, based on a change of classification of short-term notes from investment capital to business capital will be allowed, in accordance with Section 3-4.2(c) of the New York State Corporation Franchise Tax Regulations.

However, amended reports or claims for refunds, timely filed, for these same periods, which change the classification of short-term notes from business capital to investment capital will be disallowed, based on the International Harvester determination (New York State Supreme Court, Appellate Division, third Dept., dated 6/23/77).

The Article 9-A Regulations, Section 3-4.3(d) and Section 3-4.2(c) have been amended to provide that for taxable years beginning on or after January 1, 1978, short-term notes acquired in the ordinary course of trade or business for services rendered, or for sales of property which are primarily held for sale to customers, are business capital and not investment capital. Notes of a type commonly dealt in upon securities exchanges or markets or commonly dealt in as a medium for investment are investment capital.