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

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Corporation Tax
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Overview
Business Tax Reform and Rate Reduction Act of 1987

Introduction

Chapter 817 of the Laws of 1987 revises the franchise taxes for business corporations (Article 9-A), Banking Corporations (Article 32), and Insurance Corporations (Article 33). Generally, the changes are effective immediately and are applicable to taxable years beginning after December 31, 1986. Some transitional rules exist. This memorandum presents an overview of the various law changes. Subsequent memorandums will be issued addressing the more complex changes in greater detail.

Summary of Changes

Article 9-A

Chapter 817 specifically:

(a) reduces the rate of the tax measured by the entire net income base from 10% to 9% (The rate reduction is also applicable to taxable income from an unrelated trade or business conducted in New York State (Article 13));

(b) reduces the rate of the tax measured by the entire net income base for small business taxpayers from 10% to a graduated rate of between 8% and 9%;

(c) creates a new minimum taxable income base measured by entire net income (with certain modifications) allocated by the three factor formula (with single weighting of receipts) and taxed at the rate of 3.5% for taxable years beginning in 1987 through 1989. For 1990 and thereafter, a 3% rate will be imposed on entire net income modified by certain federal tax preferences and adjustments (with single weighting of receipts). The new minimum tax cannot be reduced by any tax credits.

(d) redefines the value of capital for purposes of computing the capital based tax (real property and marketable securities are to be valued at fair market value while other personal property is valued at accounting book value in accordance with generally accepted accounting principles), and a $350,000 cap is placed on the tax on capital;

(e) repeals the alternative tax on "income plus compensation paid to officers";

(f) reduces the rate of investment tax credit for property used in production through a variety of processes from 6% to 5% on part of the investment and 4% on the remainder, and limits carry forwards to seven years. Qualified property now includes industrial waste treatment property, air pollution control facilities, and research and development property.

Credits taken prior to 1987 may not be carried forward to taxable years beginning after 1993. For recapture purposes, New York depreciable life will now be used to calculate recapture amounts.

(g) eliminates three-year employment incentive credit and replaces it with a two year employment incentive credit with variable rates and a carry forward limited to seven years;

(h) limits credits that may be claimed against tax to the higher of the new minimum tax or the fixed dollar minimum of $250;

(i) repeals the Domestic International Sales Corporation (DISC) export credit; and

(j) repeals the credit for sales taxes paid on catalytic purifying or bleaching agents.

Chapter 817 also:

(a) provides for the valuation of property included in the property factor at the federal adjusted basis with a one-time fair market value election;

(b) provides for the inclusion of leased personal property in the property factor, with an optional one-time election phase-in over five years;

(c) provides for certain adjustments in the computation of entire net income:

  (1) eliminates the deduction for taxes paid to other states, their municipalities and the District of Columbia;

  (2) increases the minimum deduction for interest paid to certain stockholders (from $1,000 to $10,000), adds reporting requirements for interest paid to more than 50 percent shareholders, and repeals the modification in 1989; and

  (3) disallows a deduction for all indirect expenses attributable to subsidiary capital;

(d) provides that the treatment of New York and U.S. securities, for purposes of computing the investment allocation percentage, to be the same as obligations of other states;

(e) requires corporations that have elected "S" corporation status with New York to pay a filing fee of $25 for taxable years beginning in 1988, $50 for taxable years beginning in 1989, and $100 for taxable years beginning in 1990 and thereafter;

(f) provides for exemption of Real Estate Mortgage Investment Conduits (REMICs) from franchise and personal income taxes; and

(g) repeals obsolete credits and other provisions, and makes technical and conforming amendments to the Tax Law.

Article 32

(a) Allows large financial institutions (assets of more than $500 million) that are not thrift institutions to continue to use the reserve method for computing the bad-debt deduction;

(b) restores the former level of bad-debt deductions for thrift institutions that use the percentage of taxable income method; and

(c) makes technical and clarifying amendments to Article 32.

Article 33

(a) reduces the rate of the premiums tax on life insurance companies from 1% to .8%;

(b) returns the windfall to non-life insurance companies by decoupling from certain Internal Revenue Code provisions relating to unearned premiums and discounting for unpaid losses; and

(c) conforms Article 27 to the Internal Revenue Code (for Article 33 taxpayers) with respect to the addition to tax for underpayment of estimated tax (re: differential earnings rate.)