

50% DIVIDEND DEDUCTION TO
CONFORM WITH FEDERAL HOLDING PERIODS

Chapter 61 of the Laws of 1989 amended §208.9(a)(2) to provide that dividends other than from subsidiaries eligible for a fifty percent deduction in computing entire net income conform with the provisions of §246(c) of the Internal Revenue Code.

Under §246(c)(1)(A) of the Internal Revenue Code no deduction is allowed with respect to any dividend on any share of stock which is held by the taxpayer for 45 days or less. Under §246(c)(1)(B) no deduction is allowed to the extent that the taxpayer is under an obligation to make related payments with respect to positions in substantially similar or related property.

In the case of any stock having preference in dividends the holding period will be 90 days in lieu of 45 days provided the taxpayer receives dividends on the stock which are attributable to a period of more than 366 days.

When determining the applicable period for which a taxpayer has held any share of stock, the day of disposition, but not the day of acquisition, shall be taken into account. There shall not be taken into account any day, which is more than the applicable holding period, after the date any share has become an ex-dividend.

The holding period is to be appropriately reduced for any period during which the taxpayer's risk of loss is diminished because the taxpayer has an option to sell, is under contractual obligation to sell, has made but not closed a short sale of, or is the grantor of an option to buy, substantially identical stock or securities.

Accordingly when computing entire net income, certain dividends included in federal taxable income will no longer be eligible for the fifty percent deduction for non-subsidary dividends unless such dividends result from shares of stock meeting the holding period requirements of §246(c) of the Internal Revenue Code.

This amendment is effective for taxable years beginning on or after January 1, 1989.