

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

TSB-M-90 (7) C
Corporation Tax
July 7, 1990

Amendments to Tax Surcharge
Article 33

Section 339 of Chapter 61 of the Laws of 1989 added Section 1520 to Article 33 of the Tax Law. Section 34 of Chapter 190 of the Laws of 1990 amended the original provisions of Section 1520.

Section 1520 originally provided for a 2 1/2% tax surcharge to be imposed upon all insurance corporations for any taxable year ending after 6/30/89 but before 7/1/92. Section 34 of Chapter 190 of the Laws of 1990 revised the dates to which the surcharge applies, the rate of the surcharge imposed and the method of computing the surcharge. For taxable years ending after 6/30/89 but ending before 7/1/90, a surcharge at the rate of 2 1/2% will be imposed (for computation of the 2 1/2% tax surcharge see TSB-M-89(5)C Rev.). For the three taxable years ending after 6/30/90 but before 7/1/93, the surcharge will be imposed at the rates of 15%, 15% and 10%, respectively. The tax surcharge for these periods will be imposed on the lower of the taxes computed under Sections 1501 and 1510 of Article 33 or the Limitation on tax computed under Section 1505 of Article 33. Tax credits computed under Section 1511 will be allowed to be applied against the lower of these taxes prior to the computation of the surcharge. The tax surcharge will be computed as follows:

- Ex. XYZ Insurance Corporation normally files on a calendar year basis and submits its report for the period ended 12/31/90. XYZ Corporation computes a \$10,000 tax liability under Sections 1501 and 1510 and a \$6,000 tax liability under Section 1505. A \$1000 tax credit is allowable pursuant to Section 1511(c). The surcharge rate is 15% since it is for a period ending after 6/30/90 but before 7/1/92. The surcharge is \$750, since it is computed on the lower of the taxes computed under Sections 1501 and 1510 or Section 1505, after allowance of any tax credits. The total tax and tax surcharge due will be the lower of the tax computed under Sections 1501 and 1510 or Section 1505, less tax credits allowable under Section 1511 plus the tax surcharge computed on the lower of the taxes. The total tax and surcharge due for XYZ Insurance Corporation would be \$5,750, as follows:

Limitation on tax (Section 1505)	\$ 6,000
Tax Credits (Section 1511)	<u>- 1,000</u>
	\$ 5,000
Tax Surcharge (Section 1520)	<u>+ 750</u>
Total Tax and Tax Surcharge Due	\$ 5,750

Assume the same facts as above except XYZ Insurance Corp. is allowed a \$8,000 tax credit under Section 1511(c). Since a tax credit is applied against the tax before computation of the tax surcharge, the total tax and tax surcharge due for XYZ Insurance Corp., would be 0, as follows:

Limitation on Tax (Section 1505)	\$6,000
Tax Credits (Limited to Tax)	<u>-6,000</u>
	\$ 0
Tax Surcharge (Section 1520)	<u>0</u>
Total Tax and Tax Surcharge Due	\$ 0

XYZ Insurance Corp. has a \$2,000 tax credit remaining under Section 1511(c) which it may either carry over to the following taxable year or have refunded.

The Metropolitan Transportation Business Tax Surcharge imposed by Section 1505-a of Article 33 is not included in the computation of the tax surcharge under Section 1520, nor is the tax surcharge under Section 1520 included in the computation of the Metropolitan Transportation Business Tax Surcharge imposed by Section 1505-a.

The 2 1/2% tax surcharge rate is effective for any taxable year ending after 6/30/89 but before 7/1/90 and will not be imposed upon a taxpayer for more than 12 months. The 15% tax surcharge rate is effective for any taxable year ending after 6/30/90 but before 7/1/92 and will not be imposed upon a taxpayer for more than 24 months. The 10% tax surcharge rate is effective for any taxable year ending after 6/30/92 but before 7/1/93 and will not be imposed upon a taxpayer for more than 12 months.

The following chart shows the tax surcharge liability for each type of taxpayer:

<u>Filing Period</u>	<u>Subject to Section 1520</u>		
	<u>2 1/2% Rate</u>	<u>15% Rate</u>	<u>10% Rate</u>
Calendar Yr. (no short periods)	Calendar Yr. 1989	Calendar Yr. 1990 & 1991	Calendar Yr. 1992
Fiscal Yr. beginning prior to 8/1 (no short periods)	Fiscal Yr. 1989-1990	Fiscal Yr. 1990-1991 & 1991-1992	Fiscal Yr. 1992-1993
Fiscal Yr. beginning on or after 8/1 (no short periods)	Fiscal Yr. 1988-1989	Fiscal Yr. 1989-1990 & 1990-1991	Fiscal Yr. 1991-1992

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Calendar or Fiscal Yr. filing at least 1 short period	Combination of short periods ending after 6/30/89 but before 7/1/90 equalling 12 months	Combination of calendar yrs., fiscal yrs. and short periods ending on or after 6/30/90 but before 7/1/92 equalling 24 months.	Combination of short periods ending on or after 6/30/92 but before 7/1/93 equalling 12 months.
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The tax surcharge will be required to be filed on Form CT-33 or CT-33-A at the time the report is due. An extension of time to file may be requested by filing the appropriate extension form on or before the due date. In order for the extension to be valid, for taxable years for which the tax surcharge under Section 1520 applies, the total tax payment on the extension form must:

- (1) equal or exceed the amount of the franchise tax for the preceding taxable period (if it was a period of 12 months) plus an amount equal to 2 1/2% (before deduction of credits against the tax) or 15% or 10% (after deduction of credits against tax) whichever rate and method of computation is applicable to the taxable year, of the preceding year's tax, or
- (2) equal or exceed 90% of the franchise tax as finally determined plus 90% of the 2 1/2% (before deduction of credits against the tax) or 15% or 10% (after deduction of credits against the tax) tax surcharge, at the applicable rate, computed against the franchise tax.

Large corporations may not use (1), listed above, in determining a valid extension. A large corporation is one that had (or its predecessor had) allocated entire net income of at least one million dollars for any of the three years immediately preceding the tax year involved. See Section 1085(e) of the Tax Law.

The 25% mandatory first installment of estimated tax and the declarations and payments of estimated tax required to be made on CT-400 apply to the tax surcharge.

The tax surcharge imposed by Section 1520 shall not be allowed as a deduction in the computation of tax on income imposed by Section 1501 of Article 33 of the Tax Law. If the surcharge is deducted as an expense in the computation of federal taxable income, it must be added back to federal taxable income when computing New York State entire net income.

If during the tax surcharge period, at least 1 short period report was filed and the balance of the tax surcharge period is less than the taxable period of the report, the tax surcharge may have to be adjusted to the balance of the tax surcharge period remaining. This is to be accomplished by:

- (1) computing the tax surcharge for the period covered by the

report,

(2) dividing the tax surcharge computed in (1) by the number of months covered by the report, and

(3) multiplying the result in (2) by the number of months the tax surcharge is required to be reported.

Ex. An insurance company filed Form CT-33 for the following taxable years:

8/1/87 - 7/31/88	No Surcharge
8/1/88 - 7/31/89	2 1/2% Surcharge (1% months)
8/1/89 - 7/31/90	15% Surcharge (12 months)
8/1/90 - 12/31/90	15% Surcharge (5 months)
1/1/91 - 12/31/91	15% Surcharge (7 months)
1/1/92 - 12/31/92	10% Surcharge (12 months)