

IMPORTANT NOTICE

ATTENTION SHAREHOLDERS OF S CORPS

The Tax Law has been amended to conform to changes in federal tax treatment of S corporations, primarily those enacted by the 1996 Small Business Job Protection Act, in the following respects:

- extends New York S corporation treatment to Federal S corporations that are banks taxable under Article 32 of the Tax Law, effective for taxable years beginning after 1996.
- conforms to a large extent the Articles 9-A and 32 S corporation regimes to the federal tax treatment of **qualified subchapter S subsidiaries (QSSS)**, effective for taxable years beginning after 1996.
- extends the New York S election to shareholders which are Article 13 taxpayers (nonprofit organizations and pension plans that pay an unrelated business income tax), effective for taxable years beginning after 1997.
- grants the Commissioner of Taxation and Finance authority to validate certain late or invalid New York S elections, effective for taxable years beginning after 1982.

NEW YORK QSSS TREATMENT

In most instances, New York will follow the federal **QSSS** paradigm in the Articles 9-A and 32 franchise taxes. When **QSSS** is followed, the assets, liabilities, income and deductions of the **QSSS** will be included on the parent's franchise tax return. However, with regard to other taxes under the Tax Law, such as sales and excise taxes, the **QSSS** will continue to be recognized as a separate corporation. Under the franchise taxes:

(A) Parent a New York S Corporation. New York will follow the federal **QSSS** treatment. The parent and subsidiary will be taxed as a single New York S corporation under Article 9-A (and the shareholders of parent will be taxed under the Article 22 personal income tax). This treatment will apply whether or not the subsidiary, viewed on a stand-alone basis, is a New York taxpayer.

(B) Parent a New York C Corporation. New York will follow the federal **QSSS** treatment (a) if the subsidiary is a New York taxpayer, or (b) if the subsidiary is not a taxpayer but the parent makes a "**QSSS** inclusion election". In both instances, parent and subsidiary will be taxed as a single New York C corporation. On the other hand, if the parent does not elect, the parent will file as a New York C corporation on a stand-alone basis.

(C) Non-Taxpayer Parent. New York will follow the federal **QSSS** treatment where the subsidiary is a New York taxpayer but the parent is not, if the parent so elects. The parent and subsidiary will be taxed as a single New York S corporation (and the shareholders of parent will be taxed under the Article 22 personal income tax). If the parent does not elect, the subsidiary will file as a New York C corporation on a stand-alone basis.

(D) Subsidiary Exempt from Tax. In all instances above where **QSSS** is followed, the subsidiary is exempt not only from the income-based franchise taxes, but also from the fixed

dollar minimum tax and from the capital tax (Article 9-A) and the alternative tax based upon assets (Article 32).

(E) Exception - Excluded Corporation. Notwithstanding the above rule, **QSSS** treatment will not be allowed unless parent and subsidiary are both general business corporations or are both banking corporations. That is, within the Article 9-A framework, the parties will have to file on a stand-alone basis if one is an Article 9-A taxpayer but the other is an Article 9 (sections 183, 184, 185 or 186) or Article 32 (bank) or Article 33 (insurance) taxpayer, or is a foreign corporation not taxable by New York State that, if it were taxable, would be subject to tax under any of those sections or articles. Likewise, within the Article 32 framework, the parties will have to file on a stand-alone basis if one is an Article 32 taxpayer but the other an Article 9 (sections 183, 184, 185 or 186) or Article 9-A or Article 33 taxpayer, or is a foreign corporation not taxable by New York State that, if it were taxable, would be subject to tax under any of those sections or articles.

EXTENSION OF DEADLINE FOR NEW YORK ELECTIONS AND TERMINATIONS

The statutory deadline for electing or terminating the New York S election is 2 ½ months from the beginning of the taxable year (March 15 for most taxpayers). However, as part of the conforming amendments, these deadlines are extended.

Accordingly, the New York S election for taxable years beginning in 1997 can be made or terminated on or before November 5, 1997. Taxpayers seeking to make an S election must use Form CT-6. Those wishing to terminate their S election must use Form CT-6.1.

This extension applies to S corporations which are taxable under Article 9-A of the Tax Law. It also applies to banking corporations subject to tax under Article 32 of the Tax Law that have made an S election for Federal income tax purposes for the 1997 tax year and wish to make a corresponding New York S election.

QSSS INCLUSION ELECTION

If a **QSSS** is not a taxpayer and is not an excluded corporation, and the parent of the **QSSS** is a taxpayer which is a New York C corporation, the parent may make a **QSSS** inclusion election to include all assets, liabilities, income and deduction of the **QSSS** on the parent's return.

For taxable years beginning in 1997, the **QSSS** inclusion election may be made through November 5, 1997. This election can be made by submitting a letter to the NYS Tax Department, Corporation Tax Registration, Building 8 Room 409, W. A. Harriman Campus, Albany, NY 12227. In the letter please include the name and employer identification number of the parent and of the **QSSS**, and state that a **QSSS** inclusion election is being made. If the **QSSS** does not have and does not intend to secure an employer identification number, the letter should so indicate.