

Treatment of Interest Income from Build America Bonds

This memorandum describes the treatment of interest income from Build America Bonds for New York State, New York City, and Yonkers personal income tax purposes. In addition, special instructions are included for the 2009 tax year since the personal income tax forms and instructions do not address the tax treatment of these bonds.

General

The federal American Recovery and Reinvestment Act of 2009 implemented the Build America Bond program (hereinafter, the program) to provide funding for state and local governments. Generally, interest received on any bond or other obligation issued by a state or local government is **not** taxable for federal income tax purposes and is not included in the computation of a taxpayer's federal AGI. However, under the program, a Build America Bond (BAB) pays interest that is taxable for federal income tax purposes and, therefore, is included in the computation of the bondholder's federal adjusted gross income (federal AGI).

The federal law provides for special treatment of the interest income from BABs for state income tax purposes. This special treatment provides that, for state income tax purposes, interest income from BABs will be treated the same as if the interest was from any other tax exempt obligation issued by a state or local government. Therefore, the result of this federal special treatment in combination with New York State Tax Law is that:

- interest income from BABs issued by New York State or its local governments is not subject to tax; and
- interest income from BABs issued by states and local governments other than New York State or its local governments, is subject to tax.

Since the interest income from BABs must be included in federal AGI, a modification to federal AGI may be required to arrive at the correct computation of tax on the state return.

For tax years after 2009, taxpayers should refer to the instructions for the income tax return they are filing to make the required modification for BAB interest income. For tax year 2009, see *Special instructions for tax year 2009* on page 2.

In addition, the special treatment under federal law also affects the computation of certain New York State and New York City tax credits. See page 3 for a list of which credits are affected.

Special instructions for tax year 2009

Taxpayers who have BAB interest included in their federal AGI on their 2009 federal return should follow these instructions for completing their 2009 New York State income tax returns:

- Enter **A6** in the special condition code box of the New York State income tax return.
- Enter a New York subtraction for interest income attributable to BABs issued by New York State or its local governments on your applicable returns as follows:
 - **Form IT-150, Resident Income Tax Return (short form), Line 19** – Identify the subtraction as *S-19* and include the amount of interest income attributable to a BAB issued by New York State or its local governments on line 19.
 - **Form IT-201, Resident Income Tax Return (long form), Line 31** – Identify the subtraction as *S-36* and include the amount of interest income attributable to a BAB issued by New York State or its local governments on line 31.
 - **Form IT-360.1, Change of City Resident Status, Line 19** – Include in each column for line 19 the amount of BAB interest income attributable to a BAB issued by New York State or its local governments. Taxpayers must attach a separate sheet to Form IT-360.1 that identifies the subtraction and indicates the amount of BAB interest included on line 19.
 - **Form IT-203, Nonresident and Part-Year Resident Income Tax Return, Line 29** – Identify the subtraction as *S-37* and include the amount of interest income attributable to a BAB issued by New York State or its local governments on line 29 in the *Federal amount column* and the *New York State amount column*.
 - **Form IT-204, Partnership Return, Line 109** – Identify the subtraction as *ES-26* and include the amount of interest income attributable to a BAB issued by New York State or its local governments in column A and column B. The partnership must then provide each partner with the partner's distributive share of the subtraction on the partner's Form IT-204-IP, *New York Partner's Schedule K-1*. The partner must enter code *ES-26* and the amount of their subtraction on the *Other* subtraction line for the return the partner is filing.
 - **Form IT-205, Fiduciary Income Tax Return, Line 68** – Identify the subtraction as *S-35* and include the amount of interest income attributable to a BAB issued by New York State or its local governments on line 68.

- **Form CT-34-SH, *New York S Corporation Shareholder's Information Schedule, Line 5*** – Identify the subtraction as *ES-27* and include the amount of interest income attributable to a BAB issued by New York State or its local governments on line 5. The shareholder must enter code *ES-27* and the amount of their subtraction on the *Other* subtraction line for the return the shareholder is filing.
- Recompute federal AGI for purposes of determining eligibility and/or the amount of credit allowed for the following income tax credits:
 - New York State and New York City household credit,
 - Empire State child tax credit, and
 - New York City child and dependent care credit.

To recompute federal AGI for purposes of the above credits, subtract the **total amount** of BAB interest income included in federal AGI from the federal AGI amount as shown on the taxpayer's federal return.

Amended returns

Taxpayers who filed a New York State income tax return for 2009 and did not subtract interest income from a BAB issued by New York State or its local governments that was included in federal AGI, or did not properly compute their federal AGI for purposes of claiming the affected New York State or New York City income tax credits discussed above, may file an amended income tax return to correct their New York State, New York City, and/or Yonkers income tax liability. Taxpayers filing an amended return for the reasons stated above must enter **A6** in the special condition code box of the amended income tax return

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