New York State
Department of
Taxation and Finance
Taxpayer Guidance Division

Technical Memorandum
TSB-M-12(6)I
Income Tax
July 5, 2012

Summary of Budget Bill Personal Income Tax Changes Enacted in 2012

This memorandum contains a summary of personal income tax changes that were enacted as part of the 2012-2013 New York State budget (Chapter 59 of the Laws of 2012). The following legislative changes are summarized in this memo:

- Electronic filing and electronic payment mandate changes
- Extension of the biofuel production credit
- Extension of the Empire State commercial production credit
- Extension of the New York State noncustodial parent earned income credit
- Low-income housing credit
- New York Youth Works Tax Credit Program
- Suspension of STAR eligibility for taxpayers with past-due state tax liabilities

Electronic filing and electronic payment mandate changes

The sunset date for the revised electronic filing and electronic payment mandate provisions established under section 23 of Part U of Chapter 61 of the Laws of 2011 has been extended through 2013. These revised provisions apply to tax preparers and individual taxpayers using tax software to prepare their returns. The e-file mandate rules that were in effect before the revised provisions established under Chapter 61 of the Laws of 2011 will be restored as of January 1, 2014.

In addition to the extension of the revised mandate, the new law changed several provisions of the revised e-file mandates. These changes are summarized below.

Individual taxpayer e-file mandate. The e-file mandate for individuals applies to any tax returns or authorized tax documents prepared by individuals using tax software and required to be filed after January 1, 2012, and before January 1, 2014.

Under the new law, individuals are still required to e-file their personal income tax returns if:

- they use tax software to prepare their returns;
- the tax software supports e-filing; and
- they have broadband internet access.

However, the new law **eliminated**:

- the $25 penalty that applied to individuals for failure to e-file their personal income tax returns, and

- the provision that denied individuals interest on any overpayment or refund claimed on a return until the return was properly e-filed.

These changes are effective as of March 30, 2012.

Tax preparer e-file mandate. The e-file mandate threshold has changed for tax preparers who first become subject to the mandate for tax years beginning on or after January 1, 2012, and before January 1, 2014. A tax preparer who prepares tax documents for more than ten different taxpayers during any calendar year, and in a succeeding year prepares one or more authorized returns using tax software, must file all authorized tax documents electronically in that succeeding tax year as well as each year thereafter.

The tax preparer e-file mandate previously was based on the number of authorized tax documents prepared by a tax preparer using tax software. Tax preparers who met the prior e-file mandate requirement by preparing more than five authorized tax documents in a previous year must still electronically file all authorized tax documents in succeeding tax years if they prepare one or more returns using tax software.

Definition of an authorized tax document. The definition of an *authorized tax document* has been changed to **exclude** any return or report that includes one or more tax documents that cannot be filed electronically. This change is effective as of March 30, 2012.

For the most up-to-date information on the e-file mandates for individuals and tax preparers, see the Tax Department Web site (*www.tax.ny.gov*).

(Tax Law sections 29(a)(1), 29(b)(2), 29(e)(2), and 29(e)(4))

Extension of the biofuel production credit

The biofuel production credit has been extended through tax years beginning before January 1, 2020. Under existing law, the credit expired December 31, 2012.

(Tax Law section 606(jj))

Extension of the Empire State commercial production credit

The Empire State commercial production credit has been extended through tax years beginning before January 1, 2015. Under prior law, this credit expired on December 31, 2011.

The Governor’s Office for Motion Picture and Television Development is authorized to issue $7 million in credits annually in 2012 through 2014 to taxpayers meeting certain thresholds of commercial production activity. The new law changes how this credit amount is allocated for calendar years beginning on or after January 1, 2012. The new credit allocation is as follows:

- $1 million is allocated to the incremental cost component. The credit is distributed on a pro rata basis among all credit applicants, although no individual company may receive an annual allocation greater than $300,000.

- $3 million is allocated to eligible production companies that film or record qualified commercials within the metropolitan commuter transportation district (MCTD).
- $3 million is allocated to eligible production companies that film or record qualified commercials outside of the MCTD. If the total amount authorized for this credit component exceeds the amount of credits claimed, the excess will be allocated to the incremental cost component.

For more information on the Empire State commercial production credit, see the New York State Governor's Office for Motion Picture and Television Development Web site at *www.nylovesfilm.com*.

(Tax Law sections 28, 210.38, and 606(jj))

Extension of the New York State noncustodial parent earned income credit

The New York State noncustodial parent earned income credit is available to certain noncustodial parents who pay child support for a qualifying child.

The Tax Law has been amended to extend this credit for two more years to tax years 2013 and 2014. Prior to the amendment, the credit was due to expire for tax years after 2012.

(Tax Law section 606(d-1))

Low-income housing credit

The New York State Low-Income Housing Tax Credit Program was established in 2000 to promote the construction and rehabilitation of low-income housing in New York State. The credit is similar to the federal low-income housing credit and is administered by the New York State Division of Housing and Community Renewal.

Effective March 30, 2012, the Public Housing Law has been amended to increase the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects from $32 million to $40 million. Additionally, effective April 1, 2013, the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects will be increased from $40 million to $48 million.

(Public Housing Law section 22(4))

New York Youth Works Tax Credit Program

The New York Youth Works Tax Credit Program was established to provide tax incentives to qualified businesses employing at-risk youths in full-time and part-time positions. The program is administered by the Department of Labor.

Chapter 59 of the Laws of 2012 made several amendments to the program. These amendments extend certain program deadlines and clarify the tax year(s) for which the separate components of the tax credit will be allowed. For more information, see TSB-M-12(5)C, 12(4)I, *Legislative Amendments to the New York Youth Works Tax Credit Program*.

(Labor Law section 25-a and Tax Law section 606(tt))

Suspension of STAR eligibility for taxpayers with past-due state tax liabilities

New section 171-y has been added to the Tax Law. This new law authorizes the Tax Department to establish a program to aid in the collection of past-due state tax liabilities by suspending eligibility for STAR (school tax relief) exemptions. In addition, section 425 of the Real Property Tax Law has been amended to allow for this program.

For purposes of the new program, the following definitions apply:

- *State tax liability* means any tax (including but not limited to local sales tax and income tax), surcharge, penalty, interest charge, or fee administered by the Commissioner of Taxation and Finance that is owed by the taxpayer.

- *Past-due state tax liability* or *past-due state tax liabilities* means any state tax liability or liabilities:

    - that have become fixed and final and the taxpayer no longer has any right to administrative or judicial review; and

    - for which the taxpayer has not made a satisfactory payment arrangement.

- *Mistake of fact* is limited to claims that:

    - the individual notified is not the taxpayer who owes the tax; or

    - the past-due state tax liabilities were satisfied; or

    - the department incorrectly found that the taxpayer has failed to comply, more than once within a twelve-month period, with the terms of the installment payment agreement that includes the past-due state tax liabilities.

- *Taxpayer* means the individual responsible for the payment of any past-due state tax liabilities.

- *STAR exemption* means the exemption from real property taxation authorized by section 425 of the Real Property Tax Law.

The new program allows the Tax Department to identify taxpayers whose total past-due state tax liabilities are $4,500 or more and who own real property (wholly or in part) that is eligible for the STAR exemption. The department will notify these taxpayers that the eligibility for the

STAR exemption on their property can be suspended. To avoid the suspension, a taxpayer must respond to the notice by:

- satisfying the past-due state tax liabilities,

- entering into an installment payment agreement with the department to satisfy the past-due state tax liabilities[1], or

- showing there has been a *mistake of fact* regarding the past-due state tax liabilities.

A taxpayer will be allowed at least 45 days to respond to the department notification.

If a taxpayer fails to respond by the date specified in the notification, the department is authorized to notify the local assessor to suspend the eligibility for the STAR exemption for the taxpayer's property. If the taxpayer's property is a cooperative apartment or mobile home receiving a STAR exemption, the suspension will only apply to the STAR exemption amount attributable to the cooperative apartment or mobile home owned by the taxpayer.

Once the Tax Department notifies an assessor to suspend the eligibility for the STAR exemption, the property will remain ineligible for the STAR exemption until the department notifies the assessor that the suspension of its eligibility may be lifted.

When a taxpayer's property becomes ineligible for the STAR exemption, the school property tax liability for that property will increase. However, the amount of the property tax increase that is due to the suspension of the STAR exemption will be credited against the taxpayer's past-due state tax liabilities. When the taxpayer's past-due state tax liabilities are satisfied, the department will notify the assessor that the property's ineligibility for the STAR exemption may be lifted. If all other requirements under section 425 of the Real Property Tax Law are met, the STAR exemption will apply to the taxpayer's property for the following school year.

Note: An assessor or board of assessment review does not have the authority to consider a challenge to the suspension of eligibility for the STAR exemption due to a past-due state tax liability. The suspension may only be challenged before the Tax Department on the grounds of *mistake of fact.* In addition, a taxpayer will have no right to begin a court action, administrative proceeding, or any other form of legal recourse against the department or an assessor regarding the suspension. However, taxpayers are not prohibited from applying for relief from past-due state tax liabilities under section 654 of the Tax Law (relating to relief from joint and several liability for certain married or formerly married taxpayers) or by filing a petition under the Bankruptcy Code of 1978 (Title 11 of the United States Code).

These provisions will apply to the STAR exemption for the 2013-2014, 2014-2015, and 2015-2016 school years.

(Tax Law section 171-y and Real Property Tax Law section 425)

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[1] If a taxpayer fails to comply with the terms of the installment payment agreement more than once in a twelve month period, the department may immediately notify the assessor to suspend the property's eligibility for the STAR exemption.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeal Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.