

Supplemental Summary of Corporation Tax and Personal Income Tax Legislative Changes Enacted in 2002

TSB-M-02(5)C, *Summary of Corporation Tax Legislative Changes Enacted in 2002*, and TSB-M-02(8)I, *Summary of Income Tax Legislative Changes Enacted in 2002*, were previously issued to provide brief summaries of the legislative changes enacted in 2002. In addition, TSB-M-02(6)C, (10)I, *Amendments Relating to the Alternative Fuels Credits and Exemption*, was issued to provide information regarding recent amendments to those credits and the exemption. This supplemental memorandum is issued to provide summaries for additional legislative changes enacted in 2002 that were not included in the previously issued memorandums.

The following legislative changes are summarized in this memo:

- Technical correction to the tax credit for long-term care insurance;
- Deduction allowed for an attorney-in-fact (AIF) for income received from a reciprocal insurer; and
- Power for Jobs tax credit amendments regarding energy service companies.

The changes to the long-term care insurance tax credit apply to personal income tax taxpayers and taxpayers subject to tax under Articles 9, 9-A, 32, or 33. The remaining legislative changes apply only to taxpayers subject to tax under Articles 9, 9-A, 32, or 33.

Technical corrections to the tax credit for long-term care insurance (Articles 9, 9-A, 22, 32, and 33)

The Tax Law allows a credit equal to 10% of the premiums paid during the tax year for the purchase of a long-term care insurance policy that qualifies for the credit pursuant to Insurance Law section 1117. The credit is available under Article 9-A (Franchise Tax on Business Corporations), Article 22 (Personal Income Tax), Article 32 (Franchise Tax on Banking Corporations), Article 33 (Franchise Tax on Insurance Corporations), and certain sections of Article 9 (Corporation Tax). See TSB-M-02(1)C and TSB-M-02(1)I, *Summary of Legislative Changes Enacted in 2001*, for information previously issued on this credit.

The Tax Law and the Insurance Law have been amended by Chapter 311 of the Laws of 2002 to provide that premiums paid for continuing coverage under a qualifying long-term care insurance policy are eligible for the credit and to technically conform the language contained in each law with respect to the long-term care insurance tax credit.

The following information summarizes the long-term care insurance tax credit in effect for

tax years beginning on or after January 1, 2002.

A qualifying long-term care insurance policy is one that is a qualified long-term care insurance contract pursuant to section 7702B of the Internal Revenue Code (IRC), and is:

- approved by the New York State Superintendent of Insurance pursuant to section 1117(g) of the Insurance Law; **or**
- a group contract delivered or issued for delivery outside of New York State. Group contracts include, but are not limited to, those that otherwise qualify and are offered:
 - ▶ by professional associations and societies, membership organizations and not-for-profit groups (or by a subsidiary or affiliated entity of any of the above) to the members of the association, society, organization or group; or
 - ▶ by employers to their employees.

The credit is not refundable for personal income taxpayers or taxpayers subject to tax under Articles 9, 9-A, 32, or 33. However, any portion of the credit that cannot be applied to the current year's tax may be carried forward indefinitely to the following year or years.

Additional limitations for taxpayers subject to tax under Articles 9, 9-A, 32, or 33

For taxpayers taxable under Articles 9, 9-A, 32, or 33, the credit may not reduce the tax to less than:

- the applicable minimum tax fixed by section 183, 185, or 186 under Article 9;
- the larger of the tax on minimum taxable income base or fixed dollar minimum as computed under Article 9-A;
- the minimum tax of \$250 under Article 32; or
- the minimum tax of \$250 under Article 33.

The credit may not be used against the taxes and fees imposed under sections 180 and 181 of Article 9, or the MTA surcharge under Article 9, 9-A, 32, or 33. Under Article 9, the credit must first be deducted from the taxes imposed by section 183. Any credit remaining may then be deducted from the taxes imposed by section 184.

(Tax Law sections 190, 210.25-a, 606(aa), 1456(k)(1), and 1511(m)(1), Insurance Law section 1117)

Deduction allowed for an attorney-in-fact (AIF) for income received from a reciprocal insurer or interinsurer (Articles 9-A and 33)

The Tax Law has been amended by Chapter 228 of the Laws of 2002 to provide an attorney-in-fact (AIF) for a reciprocal insurer or a mutual insurance company that is an interinsurer with a

subtraction from federal taxable income in computing entire net income, if the reciprocal insurer or interinsurer has made the election provided for under Internal Revenue Code (IRC) section 835. The subtraction is the difference between the amount paid or incurred in the tax year by the reciprocal insurer or interinsurer to the AIF, and the deduction allowed the insurer pursuant to the IRC section 835 election.

The Tax Law has also been amended to create limited exceptions to the secrecy provisions to facilitate the administration of the AIF subtraction from federal taxable income. The Commissioner has the authority to release to the reciprocal insurer or interinsurer any information concerning the entire net income or business allocation percentage of the AIF, or any member of the combined group that includes the AIF, that was the basis for the denial in whole or in part of the deduction claimed by the AIF. Additionally, the Commissioner has the authority to release to the AIF any information concerning the entire net income or income allocation percentage of the reciprocal insurer or interinsurer, or any member of the combined group that includes the reciprocal insurer or interinsurer, that is the basis for the denial, in whole or in part, of the deduction claimed by such AIF.

These provisions apply to tax years beginning on or after January 1, 2002.

(Tax Law sections 208.9(a)(15), 211.12, and 1518(f))

Power for Jobs tax credit (Article 9)

A Power for Jobs tax credit is available under Tax Law section 186-a to qualified electric corporations during calendar years 1997 through 2005. The Power for Jobs tax credit must be pre-certified by the Public Service Commission before the credit can be claimed on a return.

Section 186-a(9) of Article 9 of the Tax Law has been amended by Chapter 226 of the Laws of 2002 to clarify the scope of the credit allowed to utility companies that deliver power under the Power for Jobs program, and to provide for the new energy service company (ESCO) option that was added to the Public Authorities Law and the Economic Development Law.

(Tax Law section 186-a(9))