



## Small Business Subtraction Modification

This memorandum discusses the small business subtraction modification that was signed into law as part of the 2013-2014 New York State budget (Part Y of Chapter 59 of the Laws of 2013).

Chapter 59 of the Laws of 2013 (Part Y) amended the Tax Law and the Administrative Code of the City of New York to provide for a small business subtraction modification. This subtraction modification applies to certain taxpayers who have small business income<sup>1</sup> and/or farm income<sup>2</sup> attributable to one or more of the following:

- A small business that is a sole proprietorship where the sole proprietor employs one or more persons during the tax year and the net small business income is greater than zero but less than \$250,000 for the tax year.
- A farm business that is a sole proprietorship where the sole proprietor employs one or more persons during the tax year and the net farm income is greater than zero but less than \$250,000 for the tax year.
- A farm business that is a partnership, a New York S corporation, or a qualified joint venture that employs one or more persons during the tax year and the net farm income is greater than zero but less than \$250,000 for the tax year.

For purposes of the net income limitation (greater than zero but less than \$250,000 for the tax year), a taxpayer who has items of income, gain, loss, or deduction from more than one small business or farm business for the tax year must apply the income limitation to each business separately. A net loss from one business cannot be used to offset the net income from another business for purposes of meeting the net income limitation.

**Example 1:** *Taxpayer A is the sole proprietor of a small business that has net small business income of \$300,000 for the tax year. Taxpayer A is also the sole proprietor of a farm business that has a net loss of \$75,000 for the tax year. Taxpayer A employs more than one person at each business during the tax year.*

<sup>1</sup> For federal income tax purposes, small business income is generally reported on federal Schedule C, *Profit or Loss From Business (Sole Proprietorship)*, and/or Schedule C-EZ, *Net Profit From Business (Sole Proprietorship)*.

<sup>2</sup> For federal income tax purposes, farm income is generally reported on federal Schedule F, *Profit or Loss From Farming*, and/or federal Schedule E, *Supplemental Income or Loss*.

*Taxpayer A cannot use the net loss from the farm business to offset his or her net small business income for purposes of meeting the income limitation of the subtraction modification (greater than zero but less than \$250,000). Therefore, the subtraction modification does not apply to Taxpayer A for the tax year.*

**Example 2:** *Taxpayer B is the sole proprietor of Small Business One that has net small business income of \$15,000 for the tax year. Taxpayer B does not employ any persons during the tax year at Small Business One. Taxpayer B is also the sole proprietor of Small Business Two that has net small business income of \$125,000 for the tax year. Taxpayer B employs three persons during the tax year at Small Business Two.*

*Because Small Business One has no employees, the subtraction modification does not apply to Taxpayer B with regard to Small Business One. However, the subtraction modification does apply for purposes of Small Business Two. Therefore, Taxpayer B computes the subtraction modification using only the net small business income from Small Business Two.*

**Employment.** Generally, a worker who performs services for a business is considered an employee if the business owner has the right to control what work will be done and how it will be done. A business that employs one or more persons during the tax year must have a federal employer identification number (EIN) and must comply with all New York State employer registration and reporting requirements. For additional information, see [Publication NYS-50, Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax](#), or contact the [New York State Tax Department](#) or [Department of Labor](#).

**Computation of the subtraction modification amount.** The subtraction modification is equal to a percentage of the net items of income, gain, loss, and deduction attributable to an eligible small business or farm business that is included in the taxpayer's federal adjusted gross income (but not less than zero) for the tax year. The percentage used to compute this subtraction modification is shown in the chart below:

<b>Tax year</b>	<b>Percentage</b>
2014	3%
2015	3.75%
2016 and after	5%

- A taxpayer who has income from more than one small business or farm business that is a sole proprietorship must compute a separate subtraction modification amount for each business based on the net income from each business.
- A partnership or New York S corporation that is a farm business must compute the subtraction modification based on the net business income at the entity level. (A partner or New York S corporation shareholder can only claim his or her pro rata share of the partnership's or New York S corporation's subtraction modification.)

- A married couple who has made a federal election to be treated as a qualified joint venture must compute the subtraction modification using the business's total net income. A married couple cannot divide business items of income, gain, loss, or deduction for purposes of computing the subtraction modification even if the items have been divided for federal income tax purposes.

The small business subtraction modification is effective for tax years beginning on or after January 1, 2014.

(Tax Law section 612(c)(39) and Administrative Code of the City of New York section 11-1712(c)(35))

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 Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.