

**Note:** Please see [TSB-M-16\(2\)C](#), *Additional Revisions to the Real Property Tax Credit For Qualified New York Manufacturers*, for amendments to the Tax Law relating to the manufacturer's real property tax credit for taxpayers subject to tax under Article 9-A.

Also see [TSB-M-15\(3.1\)C, \(3.1\)I](#), *Revised Information on the Real Property Tax Credit and Reduction of the Capital Base Tax Rate for Qualified New York Manufacturers*, for amendments to the Tax Law relating to the manufacturer's real property tax credit for taxpayers subject to tax under Article 22 and the capital base tax rate for qualified New York manufacturers subject to tax under Article 9-A.

Also see [TSB-M-19\(5\)C, \(6\)I](#), *New York State Adjusted Basis for Qualified New York Manufacturers*, for amendments to the Tax Law relating to a change in the definition of qualified New York manufacturer that requires the use of the New York adjusted basis rather than the federal adjusted basis when determining whether a manufacturer meets the \$1 million or \$100 million property thresholds for determining eligibility for the manufacturer's tax rate reductions and the real property tax credit.

**TSB-M-15(3)C, (3)I begins on page 2 below.**



## **Real Property Tax Credit and Reduction of Tax Rates for Qualified New York Manufacturers**

Chapter 59 of the Laws of 2014 was signed on March 31, 2014. This new legislation created the manufacturer's real property tax credit and reduced the corporate tax rates for qualified New York manufacturers. This memorandum summarizes these corporate and personal income tax benefits for qualified New York manufacturers.

### **Definitions**

The following definitions apply for purposes of the manufacturer's real property tax credit and the reduced tax rates for qualified New York manufacturers:

- A *manufacturer* is a taxpayer or a combined group that is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing during the tax year. However, the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity are not qualifying activities for a manufacturer. A combined group is considered a manufacturer only if the combined group is principally engaged in these qualifying activities.

A taxpayer that contracts out its production activities to another entity cannot consider those activities in determining its eligibility as a manufacturer. The contractor entity may include those activities when determining whether it meets the definition of a manufacturer.

- A taxpayer or combined group is *principally engaged* in manufacturing if more than 50% of the gross receipts of the taxpayer or the combined group during the tax year are derived from the sale of goods produced by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing. In computing a combined group's gross receipts, intercorporate receipts are eliminated.
- A *qualified New York manufacturer* is a *manufacturer* that either: (1) has property in New York State of the type described for the investment tax credit under Tax Law

section 210.12(b)(i)(A)<sup>1</sup> with an adjusted basis for federal income tax purposes of at least one million dollars at the end of the tax year; or (2) has all its real and personal property in New York State. A taxpayer must meet this definition annually in order to qualify for the manufacturer's real property tax credit or the reduced corporate tax rates for qualified New York manufacturers.

**Note:** For tax years beginning on or after January 1, 2014, a qualified New York manufacturer does not include a qualified emerging technology company (QETC) for purposes of the real property tax credit or the reduced income base rate for qualified New York manufacturers. A taxpayer is a QETC if it meets the definition under Public Authorities Law (PAL) section 3102-e(1)(c), regardless of the \$10 million limitation under PAL section 3102-e(1)(c)(1).

- A taxpayer or a combined group that does not satisfy the principally engaged test may be a *qualified New York manufacturer* if:
  - the taxpayer or the combined group employs at least 2,500 employees on the last day of the tax year in manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing in New York; and
  - the taxpayer or combined group has property in the state used in these activities, the adjusted basis of which for federal income tax purposes is at least \$100 million at the close of the tax year.

**Note:** The Department will not issue any advisory opinions (under Tax Law section 171, Twenty-fourth) on the issue of whether or not a specific taxpayer or combined group satisfies the requirements to be a qualified New York manufacturer. A definitive conclusion on this issue is a factual determination that is not susceptible to an advisory opinion. Whether a specific taxpayer or combined group is considered a qualified New York manufacturer is subject to review on audit.

### **Manufacturer's real property tax credit**

A taxpayer that is subject to tax under Article 9-A or 22 of the Tax Law that is a qualified New York manufacturer is allowed a credit against its tax due under Article 9-A or 22 for eligible *real property taxes* paid on its property in New York that is:

- owned or leased by the manufacturer, and

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<sup>1</sup> Tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section 167 of the Internal Revenue Code (IRC), have a useful life of four years or more, are acquired by purchase as defined in section 179(d) of the IRC, have a situs in the state and are principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing.

- principally used during the tax year for manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing.

This credit is available for tax years beginning on or after January 1, 2014.

Partnerships, S corporations, estates, and trusts determine eligibility as a qualified New York manufacturer at the entity level for eligible real property taxes paid by the flow-through entity, and pass the distributive share of the credit through to the partners, shareholders, or beneficiaries.

A taxpayer who is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of an estate or trust, seeking to claim the credit for its own eligible real property taxes paid, must include its distributive share of receipts and qualified manufacturing property from its flow-through entities with its own receipts and qualified manufacturing property to determine if the qualified New York manufacturer requirements are met.

### **Eligible real property taxes**

To qualify for the credit, the real property taxes must be paid by the taxpayer in the year the taxes become a lien on the real property and must be for real property:

- owned or leased by the manufacturer,
- located in New York, and
- principally used during the tax year for manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing.

*Real property tax* means a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, provided that the charge is levied for the general public welfare by the proper taxing authorities at a like rate against all property over which such authorities have jurisdiction, and provided that where taxes are levied pursuant to Article 18 or 19 of the Real Property Tax Law, the property must have been taxed at the rate determined for the class in which it is contained, as provided by such Article 18 or 19, whichever is applicable.

The term real property tax includes taxes paid by the taxpayer on real property principally used during the tax year by the taxpayer in manufacturing where the taxpayer leases such real property from an *unrelated third party*<sup>2</sup> if the following conditions are satisfied:

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<sup>2</sup> Any person that does not meet the definition of a related person under section 465(b)(3)(C) of the Internal Revenue Code. See Appendix I for the IRS interpretation of the definition of related person as contained in IRS [Publication 925](#), *Passive Activity and At-Risk Rules*.

- the tax must be paid by the taxpayer as lessee pursuant to explicit requirements in a written lease, and
- the taxpayer as lessee has paid such taxes directly to the taxing authority and has received a written receipt for payment of taxes from the taxing authority.

In the case of an Article 9-A combined group that meets the definition of a qualified New York manufacturer, the conditions are satisfied if one corporation in the combined group is the lessee and another corporation in the combined group makes the payments to the taxing authority.

The term real property tax does not include a payment made by the taxpayer in connection with an agreement for the payment in lieu of taxes on real property, whether such property is owned or leased by the taxpayer.

The term real property tax does not include a charge for local benefits, including any portion of the charge that is properly allocated to the costs attributable to maintenance or interest, when:

- the property subject to the charge is limited to the property that benefits from the charge,
- the amount of the charge is determined by the benefit to the property assessed, or
- the improvement for which the charge is assessed tends to increase the property value.

The taxpayer must exclude any real property taxes attributable to areas of the property and land not used in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing. Examples of areas to be excluded include common areas, vacant land, and parking lots. One method of excluding those areas when calculating eligible real property taxes is by multiplying the total amount of taxes paid by a fraction, the numerator of which is the square footage of the property used in a qualifying activity and the denominator is the square footage of all the property and land covered by the real property tax bill. The product will equal the eligible real property taxes.

#### **Amount of credit**

The amount of the credit is the product (or pro rata share of the product, in the case of a shareholder of a New York S corporation, or the distributive share, in the case of a partner in a partnership) of the following two factors:

- 20%; and
- the eligible real property taxes paid by the taxpayer during the tax year.

### **Limitations on the amount of credit**

This credit will not be allowed if the real property taxes that are the basis for this credit are included in the calculation of another credit claimed by the taxpayer.

If a taxpayer claims any federal deduction for real property taxes and also claims the manufacturer's real property tax credit, the taxpayer must add back the amount of real property taxes used in the calculation of this credit to entire net income (ENI) under Article 9-A or New York adjusted gross income (or New York taxable income in the case of an estate or trust) under Article 22.

### **Application and refund of the credit**

For Article 9-A taxpayers, the credit is nonrefundable and cannot reduce the tax due to an amount less than \$25.

For Article 22 taxpayers, the credit may reduce the tax to zero. If the credit allowed exceeds the tax due, the excess may be treated as an overpayment of tax to be credited to the next year's tax or refunded. However, no interest will be paid on the refund.

### **Recapture of credit**

A portion of the manufacturer's real property tax credit must be recaptured if the amount of the real property taxes included in the computation of the credit is subsequently reduced by a final order in any proceeding under Article 7 of the Real Property Tax Law or other provision of law. The recapture amount is equal to the amount of the credit originally allowed less the amount of credit recalculated using the reduced real property taxes. The recapture amount must be added back to the tax otherwise due for the tax year in which the final order is issued.

If the final order reduces real property taxes for more than one year, the taxpayer must determine how much of the reduction is attributable to each year covered by the final order and calculate the recapture amount for each year based on the reduction.

### **Reduction of Article 9-A tax rates for qualified New York manufacturers**

Chapter 59 of the Laws of 2014 (Part A and Part R) amended the Tax Law to reduce corporate tax rates for qualified New York manufacturers, including eligible qualified New York manufacturers<sup>3</sup>.

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<sup>3</sup> For tax year 2014, an *eligible qualified New York manufacturer* is a taxpayer that meets the eligibility requirements specified in [TSB-M-13\(1\)C](#), *Article 9-A Tax Rates for Eligible Qualified New York Manufacturers*, and is subject to the tax rates for an eligible qualified New York manufacturer. Beginning with the 2015 tax year, these entities are considered qualified New York manufacturers and are subject to the tax rates for qualified New York manufacturers.

For purposes of the reduced rates, an Article 9-A corporation that is a partner in a partnership or member of a limited liability company (LLC) must include its distributive share of partnership receipts and qualified manufacturing property with its own receipts and qualified manufacturing property to determine if it meets the requirements to be a qualified New York manufacturer.

An Article 9-A corporation that meets the requirements to be a qualified New York manufacturer must use the tax rates that apply to qualified New York manufacturers.

### **Income base tax rate**

For tax years beginning on or after January 1, 2014, the tax rate for the ENI<sup>4</sup> base for qualified New York manufacturers is reduced to zero. Eligible qualified New York manufacturers also qualify for the zero tax rate. QETCs are no longer considered a qualified New York manufacturer for purposes of the reduced rate on the income base.

### **Capital base tax rates**

The tax rates on the capital base have changed and will be phased out for qualified New York manufacturers over a 6 year period beginning in 2016 as follows:

<b>Tax year</b>	<b>Tax rate</b>
2014	0.1362%
2015	0.15%
2016	0.106%
2017	0.085%
2018	0.056%
2019	0.038%
2020	0.019%
2021	0%

The tax on the capital base remains capped at \$350,000 for qualified New York manufacturers through tax year 2021. QETCs are considered qualified New York manufacturers for purposes of the capital base rate reductions and cap.

### **Minimum taxable income base tax rates**

The tax rate for the minimum taxable income base for tax year 2014 is 1.362% for qualified New York manufacturers, including QETCs, and 0.75% for eligible qualified New York manufacturers. This tax base is eliminated for tax years beginning on or after January 1, 2015.

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<sup>4</sup> For tax year 2014, this base is referred to as the entire net income base. For tax years on and after January 1, 2015, this base is referred to as the business income base.

**Fixed dollar minimum tax**

The fixed dollar minimum (FDM) tax for C corporations that are eligible qualified New York manufacturers for the 2014 tax year are as follows:

<b>New York receipts</b>	<b>Tax year 2014</b>
Not more than \$100,000	\$12.50
More than \$ 100,000 but not over \$ 250,000	\$37.50
More than \$ 250,000 but not over \$ 500,000	\$87.50
More than \$ 500,000 but not over \$ 1,000,000	\$250
More than \$1,000,000 but not over \$ 5,000,000	\$750
More than \$5,000,000 but not over \$25,000,000	\$1,750
Over \$25 million	\$2,500

The FDM tax for C corporations that are qualified New York manufacturers, including QETCs, for tax years beginning on or after January 1, 2014 are as follows:

<b>New York receipts</b>	<b>For tax years beginning in:</b>				
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018 and thereafter</b>
Not more than \$100,000	\$22.70	\$22	\$21	\$21	\$19
More than \$ 100,000 but not over \$ 250,000	\$68.10	\$66	\$63	\$63	\$56
More than \$ 250,000 but not over \$ 500,000	\$158.90	\$153	\$148	\$148	\$131
More than \$ 500,000 but not over \$ 1,000,000	\$454	\$439	\$423	\$423	\$375
More than \$1,000,000 but not over \$ 5,000,000	\$1,362	\$1,316	\$1,269	\$1,269	\$1,125
More than \$5,000,000 but not over \$25,000,000	\$3,178	\$3,070	\$2,961	\$2,961	\$2,625
Over \$25 million	\$4,540	\$4,385	\$4,230	\$4,230	\$3,750

If an Article 9-A combined group meets the definition of a qualified New York manufacturer, each corporation that is a taxpayer in the combined group may use the FDM applicable to qualified New York manufacturers. The FDM for each corporation will be determined using separately computed New York receipts.

**Metropolitan transportation business tax**

For tax years beginning on or after January 1, 2015, the MTA surcharge is computed using the highest of the taxes imposed on the business income base, the capital base, or the fixed dollar minimum **before** the application of tax credits. Prior to 2015, the MTA surcharge was computed on the highest tax imposed on four bases **after** the application of tax credits, using the rates and limitations in effect for tax years beginning on or after July 1, 1997, and before July 1, 1998. Qualified New York manufacturers and eligible qualified New York manufacturers that qualify for the 0% income base tax rate are still required to calculate the taxes on alternate bases and pay the applicable MTA surcharge on the highest of those taxes.



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.

## Appendix I

The information below represents the Internal Revenue Service's interpretation of the definition of *related person* in section 465(b)(3)(C) of the Internal Revenue Code, as contained in IRS [Publication 925](#), *Passive Activity and At-Risk Rules*. This definition of related person is current as of the publication date of this TSB-M.

***Related person*** includes the following:

- members of a family, but only an individual's brothers and sisters, half-brothers and half-sisters, a spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.);
- two corporations that are members of the same controlled group of corporations determined by applying a 10% ownership test;
- the fiduciaries of two different trusts, or the fiduciary and beneficiary of two different trusts, if the same person is the grantor of both trusts;
- a tax-exempt educational or charitable organization and a person who directly or indirectly controls it (or a member of whose family controls it);
- a corporation and an individual who owns directly or indirectly more than 10% of the value of the outstanding stock of the corporation;
- a trust fiduciary and a corporation of which more than 10% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust;
- the grantor and fiduciary, or the fiduciary and beneficiary, of any trust;
- a corporation and a partnership if the same persons own over 10% in value of the outstanding stock of the corporation and more than 10% of the capital interest or the profits interest in the partnership;
- two S corporations if the same persons own more than 10% in value of the outstanding stock of each corporation;
- an S corporation and a regular corporation if the same persons own more than 10% in value of the outstanding stock of each corporation;
- a partnership and a person who owns directly or indirectly more than 10% of the capital or profits of the partnership;
- two partnerships if the same persons directly or indirectly own more than 10% of the capital or profits of each;
- two persons who are engaged in business under common control; and
- an executor of an estate and a beneficiary of that estate.

To determine the direct or indirect ownership of the outstanding stock of a corporation, apply the following rules:

1. Stock owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered owned proportionately by or for its shareholders, partners, or beneficiaries.

2. Stock owned directly or indirectly by or for an individual's family is considered owned by the individual. The family of an individual includes only brothers and sisters, half-brothers and half-sisters, a spouse, ancestors, and lineal descendants.
3. Any stock in a corporation owned by an individual (other than by applying rule 2) is considered owned directly or indirectly by the individual's partner.

When applying rule 1, 2, or 3, stock considered owned by a person under rule 1 is treated as actually owned by that person. However, if a person constructively owns stock because of rule 2 or 3, he or she does not own the stock for purposes of applying either rule 2 or 3 to make another person the constructive owner of the same stock.