



Department of Taxation and Finance

Important:

The New York State and New York City minimum income taxes were repealed, effective for tax years beginning on or after January 1, 2014.

As a result, this TSB-M is obsolete and cannot be relied upon for tax years on or after that date insofar as the TSB-M addresses matters relating to the minimum income tax.

[See, Part J of Chapter 59 of the Laws of 2014]

The TSB-M begins on page 2 below.

Taxation of S Corporations and Their Shareholders

Shareholders' Treatment of Federal Items of Tax Preference from
Nonelecting New York S Corporations for Minimum Income Tax

Chapter 341 of the Laws of 1986 has amended the Tax Law on the treatment of items of tax preference derived from S corporations.

The amendment adds a new paragraph (7) to Section 622(b) of the Tax Law. The new paragraph provides that when the S corporation election under Section 660 of the Tax Law has not been made for the taxable year, any federal items of tax preference attributable to a shareholder's interest in that corporation are to be excluded from New York items of tax preference in determining the New York minimum taxable income of the shareholder.

If items of tax preference, such as accelerated depreciation on nonrecovery real property or 15-year real property placed in service before January 1, 1987, are separately shown on the shareholder's federal schedule K-1, the shareholder's subtraction modification for those items is the amount shown. However, if a shareholder's share of an item of income, gain, loss or deduction generates or modifies a federal item of tax preference that is not separately shown on schedule K-1 (such as the item of tax preference for the 60% capital gain deduction), the shareholder must calculate the portion of the federal items of tax preference that resulted from the S corporation items, as the following examples illustrate:

Example 1

For calendar year 1986 a shareholder of a federal S corporation that did not make the New York election reports a federal item of tax preference for the 60% capital gain deduction, composed of the following:

Shareholder's share of long-term capital gain derived from the S corporation	\$100,000
Long-term capital gain from individual transactions	<u>20,000</u>
Net capital gain	<u>\$120,000</u>
Federal item of tax preference	
(60% x \$120,000)	<u>72,000</u>

The amount of the shareholder's subtraction modification under Section 622(b)(7) is the amount directly related to the S corporation capital gain, or \$60,000 (60% x \$100,000).

Example 2

Same facts as Example 1, except that the federal item of tax preference for the 60% capital gain deduction is composed of the following:

Shareholder's share of long-term capital gain derived from the S corporation	\$100,000
Short-term capital loss from individual transactions	<u>(20,000)</u>
Net capital gain	<u>\$80,000</u>
Federal item of tax preference (60% x \$80,000)	<u>\$48,000</u>

The amount of the subtraction modification in this instance is limited to \$48,000, since the modification cannot exceed the total item of tax preference reported.

This amendment applies to taxable years beginning after December 31, 1982. Individuals who included items of tax preference from a nonelecting S corporation in their minimum taxable income in a prior year may file an amended return within the statute of limitations and claim the subtraction modification.