New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

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Corporation Tax
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Summary of Corporation Tax Legislative Changes Taking Effect in 2001 and After

This memorandum contains brief summaries of the corporation tax legislative changes (Chapter 63 of the Laws of 2000) that take effect in 2001 and after.

Small business corporation tax rate reduction (Article 9-A)

Corporation tax rates for qualified small businesses with an entire net income of $290,000 or less will decrease in tax years beginning after June 30, 2003. The following table reflects these reductions.

Tax rate schedule for corporations that qualify as small business taxpayers:

	Tax rate for tax years beginning after June 30, 2001, and before July 1, 2003	**Tax rate for tax years beginning after June 30, 2003**
Entire net income base of $200,000 or less	7.5%	6.85%
Entire net income base over $200,000 but not over $290,000	7.5%	$13,700 plus 7.5% of the amount over $200,000, plus 3.25% of the amount over $250,000, but not over $290,000

(See Tax Law, section 210.1.)

New York S corporations tax rate reductions (Article 9-A)

New York S corporation tax rates for tax years beginning after June 30, 2003 have been reduced. The following tables reflect these reductions.

Tax rate schedule for New York S corporations that **do not** qualify as small business taxpayers:

	Tax rate for tax years beginning after June 30, 2001, and before July 1, 2003	**Tax rate for tax years beginning after June 30, 2003**
Entire net income base	7.5%	7.5%
Article 22 tax equivalent reduction	6.85%	7.1425%

Tax rate schedule for New York S corporations that qualify as small business taxpayers:

	Tax rate for tax years beginning after June 30, 1999, and before July 1, 2003	**Tax rate for tax years beginning after June 30, 2003**
Entire net income base	7.5%	7.5%
Article 22 tax equivalent reduction	1. 7.45% of 1st $200,000, plus 2. 6.85% of amount over $200,000, but not over $250,000, plus 3. 3.85% of amount over $250,000, but not over $290,000	1. 7.4725% of 1st $200,000, plus 2. 7.1425% of amount over $200,000, but not over $250,000, plus 3. 5.4925% of amount over $250,000, but not over $290,000

(See Tax Law, section 210.1.)

Long-term care insurance credit **(Articles 9, 9-A, 32, and 33)**

Effective for tax years beginning on or after January 1, 2002, a new long-term care insurance credit was added which provides a credit against most taxes and fees imposed under Articles 9 (corporation tax), 9-A (franchise tax on business corporations), 32 (franchise tax on banking corporations), or 33 (franchise tax on insurance corporations).

The credit is equal to 10% of the premiums paid during the tax year for the purchase of

qualifying long-term care insurance. To qualify for the credit, the taxpayer's premium payment must be for the purchase of a long-term care insurance policy approved by the New York State Superintendent of Insurance pursuant to section 1117 of the Insurance Law.

The credit may not reduce the tax to less than:

- the applicable minimum tax fixed by section 183 or 185 of Article 9; or
- the larger of the tax on minimum taxable income base or fixed dollar minimum as computed under Article 9-A; or
- the fixed minimum tax of $250 computed 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. For taxpayers subject to tax under sections 183 and 184, the credit must first be applied to the tax imposed under section 183 (but may not reduce the section 183 tax to less than the fixed minimum) and any excess credit may be applied to the tax imposed under Section 184.

Any portion of the credit which cannot be applied to the current year's tax or MTA surcharge may be carried forward to the following year or years.

(See Tax Law, sections 190, 210.25-a, 1456(k), 1511(m)).

Green Building Credit **(Articles 9, 9-A, 32, and 33)**

A new green building tax credit was added which provides incentives for the construction, rehabilitation, and maintenance of buildings with high environmental standards and energy efficiency through the use of environmentally preferable building materials, and renewable and clean energy technologies.

The first taxable year for which the credit may be taken is a taxable year commencing on or after January 1, 2001. The first step in obtaining eligibility for the green buildings credit is for the taxpayer to apply to the Department of Environmental Conservation for an "initial credit component certificate." These certificates are to be issued by the Department of Environmental Conservation upon a showing by the taxpayer making the application that the taxpayer is likely within a reasonable period of time to place in service property which would warrant the allowance of the credit.

The initial credit component certificates will be issued during the years 2001 through 2004, and will set forth the first taxable year for which the credit may be claimed and the maximum credit amount allowable to the taxpayer. The credit may be claimed for five taxable years beginning with the first taxable year allowed pursuant to the initial credit component certificate, and including the four succeeding taxable years. The green buildings credit program during which the eligible

taxpayers may claim the credit applies to taxable years beginning in 2001 through 2009. In addition to the initial credit component certificate, for each taxable year that a credit is claimed, a taxpayer will have to obtain an eligibility certificate issued by a licensed architect or engineer certifying that the project meets the standards for green buildings.

The credit consists of six components. Three of the credit components relate to constructing or rehabilitating the "green building" itself. These are the whole building component, the base building (i.e. common areas) component, and the tenant space component. The credit amount for these three components is based on costs paid or incurred after June 1, 1999. The three other components are for certain costs associated with fuel cells, photovoltaic modules and new air conditioning equipment using approved refrigerants where each of these items will be used in a green building.

Where a credit has been allowed to an owner who sells a building or to a tenant who terminates his or her tenancy within the five taxable year period for allowance of the credit, the successor owner or successor tenant will be allowed the credit for the remainder of the five-year period, assuming the property in question continues to meet the applicable environmental standards.

The credit may not reduce the tax to less than:

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

Any portion of the credit which cannot be applied to the current year's tax or MTA surcharge may be carried forward to the following year or years.

For more information about this credit, visit the Department of Environmental Conservation website at: **www.dec.state.ny.us**.

(See Tax Law, sections 19, 187-d, 210.31, 606(y), 1456 (m), 1511 (o))

Empire Zones Program Act **(Articles 9-A, 32, and 33)**

The Tax Law was amended to provide tax benefits under the new Empire Zones Program Act. The Act directs that the term *economic development zone (EDZ)* is to be changed to *empire zone (EZ)* wherever the term appears in the laws of New York State. Thus, the EDZ investment tax credit, EDZ wage tax credit, and EDZ capital tax credit should now be referred to as the EZ investment tax credit, the EZ wage tax credit and the EZ capital tax credit.

For tax years beginning on or after January 1, 2001, the Empire Zones Program Act provides for two new credits for qualified empire zone enterprises taxable under Tax Law Articles 9-A, 32 and 33: the qualified empire zone enterprise (QEZE) credit for real property taxes, and the QEZE tax reduction credit. A business enterprise that is certified under Article 18-B of the General Municipal Law (zone-certified) prior to July 1, 2005, will be a QEZE, but only with respect to each of the 14 taxable years following its test year, and only in those taxable years in which the enterprise meets the employment test provided by the new law. The *test year* is the first taxable year of the business enterprise ending on or before the later of July 1, 2000, or the date prior to July 1, 2005, on which the enterprise was certified. To meet the employment test for a taxable year, the enterprise's average employment for the taxable year both within the empire zone(s) and in the State outside of such zone(s) must equal or exceed the averages determined for a base period.

The QEZE credit for real property taxes allows a tax credit against a QEZE's franchise taxes, for taxes paid or incurred on real property owned by the QEZE and located in empire zones. The amount of the credit is the product of (1) a benefit period factor, (2) an employment increase factor, and (3) the eligible real property taxes paid or incurred by the QEZE during the taxable year.

The credit may not reduce the tax to less than:

- the larger of the tax on minimum taxable income base or the fixed dollar minimum as computed under Article 9-A; or
- the fixed minimum tax of $250 computed under Article 32; or
- the minimum tax of $250 under Article 33.

Any amount of the credit not deductible in the current tax year may be refunded, without interest.

The tax reduction credit allows a credit against a QEZE's corporate franchise taxes and is the product of (1) a benefit period factor, (2) an employment increase factor, (3) a zone allocation factor, and (4) a tax factor.

The credit may not reduce the tax to less than:

- the fixed dollar minimum under Article 9-A; however, Article 9-A taxpayers that have a zone allocation factor of 100% are not subject to this limitation, or
- the fixed minimum tax of $250 computed under Article 32; or
- the minimum tax of $250 under Article 33.

The new law provides the methods for computing each credit. The benefits for each credit are phased out in the last four taxable years of the fourteen year period following the test year.

Note: In addition to the tax credits, certain taxpayers may be eligible for a QEZE sales and

use tax exemption. For additional information, see *Summary of the 2000 Sales and Compensating Use Tax Legislation,* TSB-M-00(6)S.

(See Tax Law, sections 14, 15, 16, 210.27, 210.28, 1456(o), 1456(p), 1511(r), and 1511(s).)

Empire Zone Employment Incentive Credit Enhancement (Article 9A)

For tax years beginning on or after January 1, 2001, taxpayers claiming an Empire Zone Employment Incentive Credit may use the credit to reduce their tax liability to the level of the fixed dollar minimum tax. Previously, taxpayers claiming this credit could only use the amount necessary to reduce their tax liability to the higher of the tax on the minimum taxable income base or the fixed dollar minimum.

This provision applies to Article 9-A taxpayers only.

(See Tax Law section 210.12-C (c).)

Allocation of receipts to New York State by registered securities and commodities dealers (Article 9-A)

The receipts factor of the Article 9-A (franchise tax on business corporations) business allocation percentage was amended with respect to certain receipts earned by a registered securities or commodities broker or dealer. A *registered securities or commodities broker or dealer* is a broker or dealer who is registered by the Securities and Exchange Commission or the Commodities Futures Trading Commission. The terms *securities* and *commodities* have the same meanings as the meanings in sections 475(c)(2) and 475(e)(2) of the Internal Revenue Code.

For tax years beginning on or after January 1, 2001, the following rules apply for determining whether a receipt is deemed to arise from services performed in New York State by a registered securities or commodities broker or dealer for purposes of computing the numerator of the receipts factor.

Brokerage commissions. Brokerage commissions earned from the execution of orders for the purchase or sale of securities or commodities, for the accounts of customers, are deemed to arise from a service performed in New York if the customer who is responsible for paying the commissions is located in New York.

Margin interest. Margin interest earned on brokerage accounts is deemed to arise from a service performed in New York if the customer who is responsible for paying the margin interest is located in New York.

Account maintenance fees. Account maintenance fees are deemed to arise from a service performed in New York if the customer who is responsible for paying the account maintenance fees is located in New York.

A customer is located in New York if the mailing address of the customer as it appears in the broker's or dealer's records is in New York.

For tax years beginning on or after January 1, 2003, the following rules apply for determining whether a receipt is deemed to arise from services performed by a registered securities dealer or broker for purposes of computing the numerator of the receipts factor.

Income from principal transactions. Gross income from principal transactions (i.e., transactions where the registered broker or dealer is acting as principal for its own account, rather than agent for the customer) are deemed to arise from a service performed in New York if the production credits for these transactions are awarded to a New York branch, office, or employee of the taxpayer. *Production credits* means credits granted to a particular branch, office or employee of the taxpayer, as determined by the taxpayer's internal accounting system, used to measure the amount of revenue that is awarded to a particular branch, office or employee. Production credits should be based, at least in part, on the branch's, office's or employee's particular activities.

Gross income includes income from principal transactions for the purchase or sale of stocks, bonds, foreign exchange and other securities or commodities, including futures and forward contracts, options, and other types of securities or commodities derivatives contracts. Gross income from principal transactions is determined after the deduction of any costs incurred by the taxpayer to acquire the securities or commodities. If requested by the Department, the taxpayer is required to furnish a detailed explanation of its internal accounting system used to measure the amount of revenue awarded to its branches, offices or employees for purposes of computing production credits.

Fees from advisory services for the underwriting of securities. Fees earned from advisory services for a customer in connection with the underwriting of securities (where the customer is the entity contemplating the issuance of securities or is issuing securities) or for the management of an underwriting of securities are deemed to arise from a service performed in New York if the mailing address of the customer who is responsible for paying the fee is in New York.

Receipts from the primary spread for the underwriting of securities. Receipts from the primary spread or selling concession from underwritten securities are deemed to arise from a service performed in New York if production credits are awarded to a branch, office, or employee of the taxpayer in New York as a result of the sale of the underwritten securities. The term *primary spread* means the difference between the price paid by the taxpayer to the issuer of the securities being marketed and the price received from the subsequent sale of the underwritten securities at the initial public offering price, less any selling concession and any fees paid to the taxpayer for advisory services or manager's fees, if such fees are not paid separately. The *public offering price* means the

price agreed upon by the taxpayer and the issuer at which the securities will be sold to the public. The *selling concession* is the amount paid to the taxpayer for participating in the underwriting of a security where the taxpayer is not the lead underwriter.

Interest earned on loans to affiliates. Interest earned on loans and advances made by a taxpayer to an affiliate with whom they are not required or permitted to file a combined return are deemed to arise from a service performed in New York if the principal place of business of such affiliate who is responsible for the payment of the interest is located in New York.

Fees for management or advisory services. Fees earned from management or advisory services, including fees from advisory services for activities relating to merger or acquisition activities, are deemed to arise from a service performed in New York if the mailing address of the customer who is responsible for paying the management or advisory fee is in New York.

If the taxpayer receives any of these receipts as a result of a securities correspondent relationship with another registered securities or commodities broker or dealer as either the clearing firm or introducing firm, the receipts are situsedin the manner as described in each instance above. If the taxpayer is the clearing firm, the receipts will exclude the amount the taxpayer is required to pay for the correspondent relationship.

If the broker or dealer is unable to determine the mailing address of the customer from its records, the location of the customer shall be the location of the branch or office of the taxpayer that generated the transaction for the customer.

The above rules also apply for situsing receipts within the metropolitan commuter transportation district.

(See Tax Law, section 210.3 (a))

An exclusion for certain receipts is added for taxpayers that are subject to the section 186-a tax on gross income (Article 9)

A taxpayer that is subject to the supervision of the New York State Department of Public Service is subject to the section 186-a tax on gross income (tax on the furnishing of utility services) and is required to separate its gross income into the following categories: (1) gross income from noncommodity gas and electric service receipts (receipts from the transportation, transmission, or distribution of gas or electricity), and (2) other gross income (receipts from the sale of the commodities of gas, electricity, steam, water, and refrigeration; and from steam, water, and refrigeration service).

For calendar tax years beginning on or after January 1, 2002, receipts received from

nonresidential customers representing the noncommodity charges for gas or electric service are excluded from gross income as follows:

Taxable Year	Exclusion
January1, 2002 - December 31, 2002	25%
January1, 2003 - December 31, 2003	50%
January1, 2004 - December 31, 2004	75%
January1, 2005, and thereafter	100%

Nonresidential customers are those customers whose use of gas or electricity, or gas or electric service **does not** qualify for the reduced rate of sales and compensating use tax on residential gas, electricity, or gas or electric service under section 1105-A of the Tax Law.

In addition to these gross income exclusions, rate reductions also apply. See TSB-M-00(2)C *Summary of Corporation Tax Legislative Changes Taking Effect in 2000.*

(See Tax Law, section 186-a)

Allocation of receipts by a corporation subject to Article 32 of the Tax Law from services provided to a Regulated Investment Company (Mutual Fund) and similar investment companies is revised (Article 32)

The receipts factor of the Article 32 (franchise tax on banking corporations) allocation percentages was amended so that receipts from providing certain services to regulated investment companies will be treated in the same manner as provided in the receipts factor used by general business corporations under Article 9-A. Under Article 32, for taxable years beginning on or after January 1, 2001, the amount of receipts from management, administration, and distribution services performed for regulated investment companies deemed to arise from services performed in New York will be based upon the proportion of number of shares that are owned by investment company shareholders domiciled in New York State to the number of outstanding shares in the investment company.

For additional information, see TSB-M-88(9)C.

(See Tax Law, section 1454(a)(2)(G).)

Investment Tax Credit for Insurance Companies (Article 33)

A new investment tax credit (ITC) was added to Article 33 (franchise tax on insurance corporations) for qualified property used by insurance corporations in providing certain financial services. The credits are available for qualified property placed in service on or after January 1, 2002, and before October 1, 2003.

Qualified property includes property principally used in the ordinary course of the insurance corporation's trade or business:

- as a broker or dealer in connection with the purchase or sale of stocks, bonds, or other securities (as defined in Internal Revenue Code (IRC) section 475(c)(2)), or of commodities (as defined in IRC 475(e)), or in providing lending, loan arrangement or loan origination services to customers in connection with the purchase or sale of securities (as defined in IRC section 475(c)(2));

- of providing investment advisory services for a regulated investment company as described in IRC section 851.

Property purchased by an insurance corporation affiliated with a regulated broker or dealer, or property leased by an insurance corporation to an affiliated regulated broker or dealer, is eligible for this credit if the property is used by the affiliate in an activity described above.

The credit will not be allowed unless all or substantially all of the insurance corporation's employees performing the administrative and support functions resulting from or relating to the qualifying uses of the property are located in New York State.

The credit may not reduce the tax to less than the Article 33 fixed minimum tax of $250. Any portion of the credit which cannot be applied to the current year's tax may be carried forward to the following 15 taxable years. Taxpayers who qualify as a new business may have the credit refunded.

This provision was modeled after the ITC for Article 32 (banking corporations). The credit's basic provisions are similar to those of the ITC for banking corporations. Therefore, the Department's interpretations of the various provisions in the Article 32 ITC are applicable to the new ITC provisions under Article 33. Refer to TSB-M-98(8)C to review those interpretations.

(See Tax Law section 1511(q).)