

Summary of Corporation Tax Legislative Changes Enacted in 2004

Fixed dollar minimum tax (Article 9-A)

The Tax Law has been amended to change the fixed dollar minimum tax amounts for taxpayers, including S corporations, under Article 9-A. Accordingly, for tax years beginning in 2004 and 2005, a taxpayer is subject to the applicable fixed dollar minimum tax as shown in the table below. This amendment will not apply to tax years beginning on or after January 1, 2006, at which time the relationship between the gross payroll and the amount of the fixed dollar minimum tax will revert to the relationship in effect prior to the amendment.

For a taxpayer with gross payroll of	The fixed dollar minimum tax equals
\$25,000,000 or more	\$10,000
Less than \$25,000,000 but more than \$6,250,000	\$5,000
Not more than \$6,250,000 but more than \$1,000,000	\$425
Not more than \$1,000,000 but more than \$500,000	\$325
\$500,000 or less; however, if \$1,000 or less see below	\$100
If the taxpayer's gross payroll, total receipts, and average value of gross assets are each \$1,000 or less	\$800

(Tax Law, section 210.1(d)(1))

Prostate cancer research, detection, and education fund (Article 9-A)

For tax years beginning on or after January 1, 2004, new section 209-E has been added to the Tax Law to allow corporate franchise tax return filers to make gifts on their returns to the prostate cancer research, detection, and education fund. The gift can be any whole dollar amount and will not reduce the amount of tax owed.

In addition, section 95-e of the State Finance Law was amended to provide that New York State will match the gifts made by taxpayers to the fund dollar for dollar.

(State Finance Law, section 95-e; Tax Law, section 209-E)

Metropolitan Transportation Authority (MTA) surcharge extender

The MTA surcharges imposed under Articles 9, 9-A, 32, and 33 of the Tax Law have been extended through tax years ending prior to December 31, 2009.

(Tax Law, sections 183-a(1), 184-a(1), 186-c(1)(a)(1), 186-c(1)(b), 209-B(1), 1455-B(1), 1505-a(a))

City of New York offsets

A new section 171-l has been added to the Tax Law to authorize the Commissioner of Taxation and Finance to offset certain New York State tax overpayments against city of New York tax warrant judgment debts arising from docketed tax warrants for unpaid city of New York taxes due under Title 11 of the Administrative Code of the City of New York.

These provisions take effect immediately.

(Tax Law, section 171-l)

Certified capital company (CAPCO) credits extended (Article 33)

The program that provides insurance companies with a credit against their franchise tax for investing in certified capital companies (CAPCOs) has been extended. This extension is denoted as *Certified Capital Company Program Four* (Program Four).

Insurance companies that participate in Program Four can invest in CAPCOs and collectively claim tax credits totaling up to \$60 million. The credit must be claimed over ten years with 10% allowed each year. Any credits not used can be carried over for an unlimited number of years. The total credit available in any particular tax year, which is the combination of the 10% allowed for that year plus any carryovers from prior years, cannot reduce the tax below the fixed dollar minimum tax.

Insurance companies may make investments in CAPCOs under Program Four beginning in 2004. However, they will not be allowed to claim the tax credits until 2006.

The maximum amount of credit allowable for investments in one or more CAPCOs by a particular insurance company or a group of affiliated insurance companies in any one year will be \$8 million in Programs Two and Four. However, if the aggregate amount of certified capital (\$60 million) has not been reached 60 days prior to the end of the year, the \$8 million limit will cease to apply for the remainder of the year.

The Superintendent of Insurance is required to start accepting applications for certification for Program Four by October 19, 2004.

(Tax Law, sections 11 and 1511(k))

Revocation of tax-exempt status of terrorist organizations (Article 9-A)

The Tax Law was amended to provide for the revocation of the tax-exempt status, for New York State tax purposes, of terrorist organizations whose names have been published pursuant to Internal Revenue Code Section 501(p) and which are no longer tax-exempt for federal purposes. This section applies to all of the state and local taxes, fees, and other impositions administered by the Commissioner of Taxation and Finance. For the corporate franchise tax imposed under Article 9-A of the Tax Law, such revocation of exempt status will apply for the entire tax year in which the date of revocation occurs and to subsequent tax years.

An organization whose tax-exempt status has been revoked pursuant to paragraph 1 of section 27 of the Tax Law and later restored by the IRS is required to submit a new application on Form CT-247, *Application for Exemption from Corporation Franchise Taxes By a Not-for-Profit Organization*. The new application must be approved before any tax-exempt status under Article 9-A is restored.

An organization whose tax-exempt status is revoked pursuant to paragraph 1 of section 27 of the Tax Law will have the right to appeal the determination using the procedures set forth by Article 40 of the Tax Law. However, the organization cannot challenge the merits of the determination made by the IRS.

This amendment was effective on September 8, 2004, although the revocation of an organization's tax-exempt status will become effective on the later of November 11, 2003, or the date that the Internal Revenue Service publishes the organization's name pursuant to Internal Revenue Code section 501(p).

(Tax Law, section 27)

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

For tax years beginning on or after January 1, 2004, the long-term care insurance credit has been increased from 10% of the premiums paid during the tax year to 20% of the premiums paid during the tax year.

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

Qualified emerging technology company (QETC) employment credit and QETC capital tax credit expanded (Article 9-A)

Effective August 20, 2004, certain biotechnology companies may qualify as QETCs and therefore may be eligible for the QETC employment credit. In addition, taxpayers that make a qualified investment in a QETC may be eligible for the QETC capital tax credit. The definition of *emerging technologies* in Public Authorities Law section 3102-e has been broadened to include certain companies that use biotechnologies involving the scientific manipulation of living organisms to produce products conducive to improving the lives and health of plants, animals, and humans.

Section 3102-e(1)(b)(5) of the Public Authorities Law provides:

(5) biotechnologies, which shall be defined as technologies involving the scientific manipulation of living organisms, especially at the molecular and/or the sub-molecular genetic level, to produce products conducive to improving the lives and health of plants, animals, and humans; and the associated scientific research, pharmacological, mechanical and computational applications and services connected with these improvements. Activities included with such applications and services shall include, but not be limited to, alternative mRNA splicing, DNA sequence amplification, antigenetic switching, bioaugmentation, bioenrichment, bioremediation, chromosome walking, cytogenetic engineering, DNA diagnosis, fingerprinting, and sequencing, electroporation, gene translocation, genetic mapping, site-directed mutagenesis, bio-transduction, bio-mechanical and bio-electrical engineering, and bio-informatics; . . .

For additional information on these credits, see TSB-M-99(2.1)C.

(Public Authorities Law, section 3102-e(1)(b)(5); Tax Law, sections 210.12-E, 210.12-F)

Qualified Empire Zone Enterprise (QEZE) credit for real property taxes expanded for agricultural cooperatives (Article 9)

For tax years beginning on or after January 1, 2004, the Tax Law has been amended to allow agricultural cooperatives taxable under section 185 of Article 9 to claim the QEZE credit for real property taxes. The credit is allowed for agricultural cooperatives that qualify as QEZEs and pay eligible real property taxes. The credit may be used to reduce the tax under Article 9, section 185, to zero. Any amount of unused credit is refundable. For more information about the QEZE credit for real property taxes, see TSB-M-03(4)C, *Qualified Empire Zone Enterprise (QEZE) Tax Credits*.

(Tax Law, section 187-j)

Film production credits (Article 9-A)

New sections 24 and 210.36 have been added to the Tax Law to provide for an Empire State film production credit. The credit is provided to a taxpayer that is a qualified film production company, or a partner of a partnership (including a member of a limited liability company that is treated as a partnership for federal income tax purposes) that is a qualified film production company. (A New York S corporation may not use this credit against its own tax; instead, the credit is provided to its shareholders who are subject to tax under Article 22 of the Tax Law.)

If the taxpayer satisfies certain criteria regarding a threshold level of activity in New York State, the credit equals 10% of qualified production costs paid or incurred in the production of certain qualified films and television shows. The credit is allowed for the tax year in which production of the film is completed.

The credit may not reduce the tax due to less than the fixed dollar minimum tax. The

amount of credit not applied to the tax in the current tax year may be refunded or credited as an overpayment to next year's tax. The refund is limited to 50% of the excess credit in the current year; the balance may be carried forward to the following tax year and may be deducted from the tax in that year. The amount of the credit not applied to the tax in the next succeeding tax year will be credited or refunded (without interest).

In addition, there is an annual cap of \$25 million on the aggregate amount of New York State credits allowed. The Empire State Film Production Credit Program will be administered by the Department of Economic Development's, Governor's Office for Motion Picture and Television Development. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess will be treated as having been applied for on the first day of the subsequent year. For more information about this credit, contact the New York State Governor's Office for Motion Picture and Television Development by e-mail at nyfilm@empire.state.ny.us or by calling (212) 803-2330.

These provisions take effect immediately and apply to tax years beginning on or after January 1, 2004, with respect to qualified production costs paid or incurred on or after that date. However, no credit can be claimed for a qualified film completed on or after August 20, 2008.

(Tax Law, sections 24 and 210.36)

Low-income housing credit (Articles 9-A, 32, and 33)

The New York State low-income housing tax credit program was established in 2000 to promote the construction and rehabilitation of low-income housing in New York State. The credit is similar to the federal low-income housing credit and is administered by the New York State Division of Housing and Community Renewal. The Public Housing Law has been amended to increase the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects from \$4 million to \$6 million per year.

This provision takes effect immediately.

(Public Housing Law, section 22; Tax Law, sections 18, 210.30, 1456(l), 1511(n))

Alternative fuels credit (Articles 9 and 9-A)

Sections 187-b and 210.24 of the Tax Law, relating to the alternative fuels credits, have been amended to extend the credits for one year. The credits are now available for qualifying property placed in service in tax years beginning before January 1, 2005. Prior to the amendments, the credits were only available for property placed in service in tax years beginning before January 1, 2004. The credits apply to electric vehicles, qualified hybrid vehicles, clean-fuel vehicle property, and clean-fuel vehicle refueling property. In addition, for tax years beginning on or after January 1, 2004, a qualified hybrid vehicle only qualifies for the alternative fuels credit for qualified hybrid vehicles. For tax years beginning prior to January 1, 2004, a qualified hybrid vehicle could qualify for either the alternative fuels credit for qualified hybrid vehicles or the alternative fuels credit for clean-fuel vehicle property. For additional information,

see TSB-M-04(3.1)I, (1.1)S, (2.1)C, *Amendments to the Alternative Fuels Credits and Exemptions*.

This provision takes effect immediately and applies as described above.

(Tax Law, sections 187-b, 210.24)

Transitional provisions for the federal Gramm-Leach-Bliley Act extended (Articles 9-A and 32)

The tax provisions that were scheduled to expire for tax years beginning on or after January 1, 2004, have been extended for two years. Specifically, the transitional provisions for financial holding companies contained in Tax Law section 1452(j) were extended by adding new Tax Law section 1452(k). Note that Tax Law section 1452(j) was added in 2003 and extended the same provisions of Tax Law section 1452(i).

Also extended were the combined reporting requirements of the transitional provisions contained in Tax Law section 1462(f)(2)(iv).

For more information on the provisions that were extended, see page 6 of TSB-M-02(1)(C), *Summary of Legislative Changes Enacted in 2001*.

Bank tax extender (Article 32)

The tax provisions of the bank tax that were scheduled to expire for tax years beginning on or after January 1, 2005, have been extended for one year.

Hearing rights

The Tax Law has been amended to change Tax Department practice with respect to the availability of hearing rights in certain cases. Specifically, there are no longer formal prepayment hearing rights where tax, interest, and/or penalty: (1) is owed due to mathematical or clerical errors on the return; (2) is owed due to changes made to the taxpayer's federal return by the Internal Revenue Service or other competent federal authority (federal changes); or (3) is owed because the taxpayer has not paid all or part of the amount of the tax that the taxpayer has shown as due on the taxpayer's return. However, after payment of the tax, interest, and/or penalty owed, the taxpayer may still file a timely claim for refund or credit; and, if the Tax Department denies the claim, the taxpayer may then apply for a conciliation conference in the Bureau of Conciliation and Mediation Services or petition for a hearing in the Division of Tax Appeals.

These amendments apply to all taxes administered by the Tax Department, including New York State, city of New York, and Yonkers personal income taxes. The amendments do not apply to the Tax on Mortgages (Article 11 of the Tax Law) or the Stock Transfer Tax (Article 12 of the Tax Law).

These amendments take effect immediately and apply to notice and demands and notices

of additional tax due issued on or after December 1, 2004.

(Tax Law, sections 173-a, 681(d), 682(a), and 684(c)), 1081(d), 1082(a) and 1084(c))

Designation of Empire Zones extended

The General Municipal Law has been amended to extend the date areas are designated as an Empire Zone to March 31, 2005. Prior to this change, the designation of areas as Empire Zones would have expired on September 13, 2004.

This amendment took effect on August 20, 2004.

(General Municipal Law, Section 969 (a))