

Supplemental Summary of Corporation Tax Legislative Changes Enacted in 2009

This TSB-M is a summary of corporation tax legislation signed into law in 2009 that was not addressed in TSB-M-09(10)C, *Summary of Budget Bill Corporation Tax Changes Enacted in 2009*.

The following legislative changes are summarized in this memo:

- Empire State commercial production credit
- Gift for the Volunteer Firefighter and Voluntary Emergency Services Workers Recruitment and Retention Fund
- Penalty and Interest Discount Program (PAID)
- Power for Jobs tax credit
- Rehabilitation of historic properties credit
- Tax Preparer Registration Program

Empire State commercial production credit (Article 9-A)

Chapter 448 of the Laws of 2009 amended section 28 of the Tax Law to provide clarification of the time period that is used to measure production for purposes of calculating the Empire State commercial production “growth” credit allowed under Tax Law section 28(a)(2)(i) when a commercial production company has not been in business for three years and does not have a full three years of prior expenses. The amendments provide that until a qualified production company has established a three-year history, the credit will be based on either its previous year or its average of the two previous years, whichever period is longer. The tax credit will be applied only to the amount of the total qualified production costs of the current calendar year that are greater than the total amount of production costs of the appropriate measurement period.

Chapter 448 also amended the definition of production costs. Under the new law, costs incurred in the production of a commercial where the commercial consists entirely of techniques such as visual effects, graphic design, or animation, when occurring in New York, are deemed to be qualified production costs for purposes of the credit.

These amendments are effective as of September 16, 2009.

(Tax Law sections 28(a)(2)(i) and 28(b)(2))

**Gift for the Volunteer Firefighter and Voluntary Emergency Services Workers
Recruitment and Retention Fund (Article 9-A)**

Chapter 490 of the Laws of 2009 added section 209-G to the Tax Law. For tax years beginning on or after January 1, 2010, the new section allows corporate franchise tax return filers to make a gift to the Volunteer Firefighter and Volunteer Emergency Services Workers Recruitment and Retention Fund. The gift can be made on the filer's corporate franchise tax return in any whole dollar amount. Any amount contributed will reduce the taxpayer's overpayment or increase the amount the taxpayer must pay.

(Tax Law section 209-G)

Penalty and Interest Discount Program (PAID) (Articles 9, 9-A, 13, 32, and 33)

Chapter 501 of the Laws of 2009 established the Penalty and Interest Discount (PAID) Program. The program's intent is to encourage eligible taxpayers to pay off their eligible tax liabilities for which an assessment or final determination was issued on or before December 31, 2006. A taxpayer who participates in the program will receive a reduction in the accrued interest and penalty currently owed on eligible tax liabilities. The program period began on January 15, 2010, and will end on March 15, 2010.

For a complete description of this program, see TSB-M-09(13)C, (14)I, (12)M, (10)R, (20)S, and visit our Web site at www.nys.tax.gov.

Power for Jobs tax credit (Article 9)

Chapter 217 of the Laws of 2009 extended the Power for Jobs tax credit to include calendar year 2010. The credit had expired on June 30, 2009. The Tax Law was retroactively amended to extend the credit so that it continues uninterrupted through 2010.

The credit is available to qualified electric corporations that are local distribution companies for net lost revenues from power delivered under the Power for Jobs program through May 15, 2010. The credit is claimed on Forms CT-186-P, *Utility Services Tax Return - Gross Income*, and CT-186-E, *Telecommunications Tax Return and Utility Services Tax Return*. To claim the Power for Jobs tax credit, eligible taxpayers must obtain a certificate from the Department of Public Service to verify the correctness of the calculation of the tax credit.

(Tax Law section 186-a(9))

Rehabilitation of historic properties credit (Article 9-A)

Chapter 239 of the Laws of 2009 amended the credit for the rehabilitation of historic properties in the general corporation franchise tax by increasing the credit from 30% to 100% of

the amount of the federal historic properties credit claimed by the taxpayer. The law was also amended to increase the maximum credit allowed from \$100,000 to \$5 million.

These amendments apply to taxable years beginning on or after January 1, 2010. They will expire and be deemed repealed December 31, 2014. However, the credit will apply to any rehabilitation project commenced on or before December 31, 2014.

Additional information on the credit will be provided by the Tax Department in a future document.

(Tax Law section 210.40)

Tax Preparer Registration Program (Articles 9, 9-A, 13, 32, and 33)

Chapter 503 of the Laws of 2009 amended the definition of *tax return preparer* in section 32 of the Tax Law. The definition is used to determine who needs to register for the Tax Preparer Registration Program for personal income tax returns prepared on or after December 31, 2009, and for returns prepared for taxes other than personal income taxes on or after December 31, 2010.

Prior to the amendment, attorneys, public accountants, and certified public accountants were excluded from the definition of tax return preparer only if they were registered or licensed in New York State. After the amendment, attorneys, public accountants, and certified public accountants who are registered or licensed in any state in the United States are excluded from the definition.

In addition, the exclusion for employees preparing returns under the supervision of attorneys, public accountants, and certified public accountants was amended. Under the new law, to be excluded from the definition of tax return preparer, the individual has to be an employee of a law firm, public accounting firm, or certified public accounting firm and be preparing returns under the supervision of an attorney, a public accountant, or a certified public accountant in that firm. Prior to the amendment, the employer was not required to be a law firm, public accounting firm, or certified public accounting firm for the employee to qualify for exclusion.

For more information on this amendment, see TSB-M-09(14)C, (16)I, (13)M, (5)MCTMT, (11)R, (21)S, *Amendment to the Definition of Tax Return Preparer for the Tax Preparer Registration Program*. For a complete description of the program see TSB-M-09(11)C, (9)I, 10(M), (3)MCTMT, (4)R, (15)S, *Tax Preparer Registration Program*.

(Tax Law section 32(a)(14))

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.