

Refundable Special Additional  
Mortgage Recording Tax Credit

General

Chapter 638 of the Laws of 1986, approved July 26, 1986, made technical changes in the special additional mortgage recording tax imposed by Section 253.1-a of Article 11 of the Tax Law. Technical changes were also made in related provisions of the Tax Law, Real Property Law and New York City personal income tax law to parallel changes in the state income tax law. The bill also changed the provisions of the special additional mortgage recording tax credit, under Section 210.17 of Article 9-A of the Tax Law. In certain instances a taxpayer may now elect to treat unused (*i.e.*, carried forward) special additional mortgage recording tax credit as an overpayment of tax to be credited or refunded in accordance with Section 1086 of Article 27. However, no interest is paid on such credit or refund.

This memorandum addresses only those sections of the bill pertinent to the special additional mortgage recording tax credit as the credit applies to corporate franchise taxes.

Summary of Provisions

Section 1 of Chapter 638 amends Section 208.9(b)(4-a) of Article 9-A (which provides for modifications to the computation of income in certain instances where the "additional mortgage recording tax" under Tax Law Section 253.1-a has been paid) to refer to such tax as the special additional mortgage recording tax. This section of the bill also amends Section 208.9(b)(4-a) to insure that such provision applies where losses result as well as gains and to dispositions other than sales as well as sales.

Section 2 of Chapter 638 amends Section 210.17(a) (which allows a credit for the special additional mortgage recording tax under Section 253.1-(a) to make a formal change to refer to such credit as a credit for special additional mortgage recording tax paid by the taxpayer.

Section 3 of Chapter 638 amends Section 210.17(b) to provide that certain of the credits permitted against the tax imposed by Article 9-A for the special additional mortgage recording tax may, at the election of the taxpayer, be treated as an overpayment, to be refunded or carried over as a credit, but without interest.

Prior to its amendment, paragraph (b) of Section 210.17 provided a single rule with respect to the application of credits for the special additional mortgage recording tax. This rule was that no such credit could reduce the Article 9-A tax payable to less than the minimum. Further, where such a credit was not deductible in full, any remaining credit could be carried over to the following year or years and could be deducted from the taxpayer's tax for such year or years.

The amendment to section 210.17(b), made by Chapter 638, changes the foregoing rule, but only for special additional mortgage recording tax which is due and paid with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities (such mortgages shall hereinafter be referred to as "Residential Mortgages"). The amended section 210.17(b) provides that any credit attributable to the special additional mortgage recording tax on Residential Mortgages (as defined above) which is due and paid in any taxable year beginning before January 1, 1986 shall not be carried over to taxable years beginning on or after January 1, 1986.

For taxable years beginning on or after January 1, 1986, and before January 1, 1990, in lieu of carrying over, to the following year or years, the unused portion of credits attributable to special additional mortgage recording tax with respect to Residential Mortgages (as defined above), the taxpayer may elect to treat such unused portion as an overpayment of tax to be credited or refunded in accordance with section 1086 of Article 27 of the Tax Law. As provided in the amended section 210.17(b), no interest will be paid on such an overpayment.

Thus, if any special additional mortgage recording tax on a Residential Mortgage (as defined above) which was due and paid in a taxable year beginning before January 1, 1986 (including any carryover of such credit from prior years) is not entirely credited against a taxpayer's tax liability on a franchise tax return for a period beginning before January 1, 1986, any tax benefit from the unused portion will be lost. Any credit or carryover of credit relating to the special additional mortgage recording tax on Residential Mortgages which is due and paid in any taxable period beginning on or after January 1, 1986 and before January 1, 1990 may, at the election of the taxpayer, in lieu of carryover of unused portions of such credit, be credited or refunded to the taxpayer, without interest.

It is important to note that the amendments made by Chapter 638 to section 210.17(b) of the Tax Law do not affect the use of credits for the special additional mortgage recording tax with respect to other than Residential Mortgages (as defined above). Accordingly, credits with respect to these mortgages remain subject to the rule of section 210.17(b) prior to the amendment, that is, that no such credit can reduce the Article 9-A tax payable to less than the minimum. Any such credit which is not deductible in full can be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

Section 10 of Chapter 638 amends Section 1453(b)(5) and (6) of Article 32 of the Tax Law in the exact same way that Section 1 of the bill amends Section 208.9(b)(4-a) of Article 9-A of the Tax Law.

Section 11 of Chapter 638 amends Section 1456(c)(1) of Article 32 (which provides a credit against bank taxes for the additional mortgage recording tax under Section 253.1-a) to provide for a formal change to refer to such tax as the special additional mortgage recording tax.

Section 12 of Chapter 638 amends Section 1503(b)(2)(E) and (F) of Article 33 of the Tax Law in a way similar to the way that Section 1 of the bill amends Section 208.9(b)(4-a) of Article 9-A of the Tax Law.

With respect to the modifications in the computation of income, as outlined in paragraphs above relating to Sections 1, 10 and 12 of the bill (modifications in the computation of entire net income), the language is made consistent with that in other sections. The limitation of the modification by the amount of the credit taken is deleted. It is also made clear that modifications on the sale of property should be made, even where there is a loss or a disposition other than a sale.

#### Effective Date of Provisions

Sections 1, 10, 11 and 12 are effective July 26, 1986 and apply to taxable years beginning on or after January 1, 1986. Sections 2 and 3 are effective immediately. Section 3 applies to taxable periods as outlined above under "Summary of provisions."