

Amendments to Article 33 - Franchise Taxes on  
Insurance Corporations

Sections 288 and 339 of Chapter 61 of the Laws of 1989 affect Article 33 of the Tax Law by amending Section 1503(b)(3) and adding Section 1520.

Section 288 of Chapter 61 amended Section 1503(b)(3) of Article 33 of the Tax Law by limiting the interest deduction in computing entire net income, to the extent not previously deducted in computing federal taxable income, for: (A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is subject to tax under this article but exempt from federal income tax; (B) ordinary and necessary expenses paid or incurred during the taxable year attributable to income which is subject to tax under this article but exempt from federal income tax; and (C) the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this article but exempt from federal income tax. The amendment to Section 1503(b)(3) of Article 33 is effective for all taxable years ending on or after April 19, 1989.

Section 339 of Chapter 61 of the Laws of 1989 added Section 1520 to Article 33 of the Tax Law. Section 34 of Chapter 190 of the Laws of 1990 amended Section 1520 (see TSB-M-90(7)C). Section 1520, as amended, provides for a tax surcharge to be imposed at the rate of 2 1/2% on the lower of the taxes computed under Sections 1501 and 1510 of Article 33 or the Limitation on tax computed under Section 1505 of Article 33. Tax credits computed under Section 1511 will not be allowed as a deduction against the lower of these taxes prior to the computation of the tax surcharge under Section 1520. The tax surcharge will be computed as follows:

Ex. XYZ Insurance Corporation computes a \$2500 tax liability under Sections 1501 and 1510 and a \$1000 tax liability under Section 1505. A tax credit of \$500 is allowable pursuant to Section 1511(c). The 2 1/2% tax surcharge is \$25, since it is computed on the lower of the taxes computed under Sections 1501 and 1510 or Section 1505, before allowance of any tax credits. The total tax and surcharge due will be the lower of the tax computed under Sections 1501 and 1510 or Section 1505, plus the tax surcharge computed on the lower of taxes computed under Sections 1501 and 1510 or Section 1505, less tax credits allowable under Section 1511. The total tax and surcharge due for XYZ Insurance Corporation would be \$525, as follows:

Limitation on tax (Section 1505)	\$1000
Tax Surcharge (Section 1520)	+ 25
	<u>\$1025</u>
Tax Credits (Section 1511)	- 500
Total Tax and Tax Surcharge Due	<u>\$ 525</u>

Assume the same facts as above except XYZ Corp. is allowed a \$1,200 tax credit under Section 1511(c). Since a tax credit may not be applied against the tax surcharge, the total tax and surcharge due for XYZ Corp. would be \$25, as follows:

Limitation on tax (Section 1505)	\$1000
Tax Surcharge (Section 1520)	+ 25
	<u>\$1025</u>
Total Credits (Limited to Tax)	- 1000
Total Tax and Tax Surcharge Due	\$ 25

XYZ Corp. has a \$200 tax credit remaining under Section 1511(c) which it may either carry over to the following taxable year or have refunded.

The Metropolitan Transportation Business Tax Surcharge imposed by Section 1505-a of Article 33 is not included in the computation of the tax surcharge under Section 1520, nor is the tax surcharge under Section 1520 included in the computation of the Metropolitan Transportation Business Tax Surcharge imposed by Section 1505-a.

The 2 1/2% tax surcharge imposed by Section 1520, as amended, first becomes effective for any taxable year ending after 6/30/89 but ending before 7/1/90. In no case shall the tax surcharge under Section 1520 be imposed upon a taxpayer for more than 12 months. For information regarding the tax surcharge for taxable years ending after 6/30/90 but before 7/1/93, see TSB-M-90(7)C.

The following chart shows the 12 month 2 1/2% tax surcharge liability for each type of taxpayer:

<u>Ex.</u> <u>Filing Period</u>	<u>Subject to Section 1520</u>
Calendar Yr. (no short periods)	Calendar Year 1989
Fiscal Yr. beginning prior to 8/1/88 (no short periods)	Fiscal Year 1989-1990
Fiscal Yr. beginning on or after 8/1/88 (no short period)	Fiscal Year 1988-1989
Calendar or fiscal yr. filing at least 1 short period	Combination of short periods ending after 6/30/89 but before 7/1/90 not to exceed 12 months.

The 2 1/2% tax surcharge will be required to be filed on Form CT-33 or CT-33-A at the time the report is due. An extension of time to file may be requested by filing the appropriate extension form on or before the due date.

In order for the extension to be valid, the total tax payment on the extension form must:

(1) equal or exceed the amount of the franchise tax for the preceding taxable period (if it was a period of 12 months) plus an amount equal to 2 1/2% of the preceding year's tax before the deduction of any tax credits, or

(2) equal 90% of the franchise tax as finally determined plus 90% of the 2 1/2% tax surcharge computed before the deduction of any tax credits against such franchise tax.

Large corporations may not use (1), listed above, in determining a valid extension. A large corporation is one that had (or its predecessor had) allocated entire net income of at least one million dollars for any of the three years immediately preceding the tax year involved.

Except for the 25% mandatory first installment of estimated tax, declarations of estimated tax required to be made on form CT-400 do not apply to the 2 1/2% tax surcharge.

The 2 1/2% tax surcharge imposed by Section 1520 shall not be allowed as a deduction in the computation of tax on income imposed by Article 33. If the surcharge is deducted as an expense in the computation of federal taxable income, it must be added back to federal taxable income to arrive at New York State entire net income.