New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-98(2)C
Corporation Tax
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SUMMARY TSB-M
ADDITIONAL 1997 CORPORATION TAX LEGISLATIVE CHANGES

In 1997, Governor George E. Pataki signed several new chapters into law. This memorandum is a brief summary of the 1997 Corporation Tax legislative changes that have application to tax years 1998 and later, with the exception of the provisions regarding fulfillment services, which became effective September 1, 1997 (see page 5). This TSB-M supplements TSB-M-97(9)C, which describes other 1997 Corporation Tax legislative changes which affected the 1997 tax year.

CREDITS

Alternative Fuels Credit

Taxpayers subject to franchise tax under Articles 9 and 9-A of the Tax Law will be allowed a credit for electric vehicles, clean-fuel vehicle property, and clean-fuel vehicle refueling property placed in service during the tax year. The credit with respect to electric vehicles is not available to those gas and electric corporations subject to section 186 of Article 9 of the Tax Law that are subject to the supervision of the Department of Public Service. The alternative fuels credit is applicable to **property placed in service in a tax year beginning after 1997 and before 2003.**

The amount of the credit, subject to the limits that follow, is:

- 50% of the incremental cost (the difference between the cost of the electric vehicle and the cost of a similar gasoline-powered vehicle) of a new electric vehicle registered in New York State and for which a federal credit is allowed under Internal Revenue Code section 30 (limited to $5,000 per electric vehicle);

- 60% of the cost of the new clean-fuel components of clean-fuel vehicles registered in New York State and for which a deduction is allowed under Internal Revenue Code section 179-A (limited to $5,000 per clean-fuel vehicle with a gross vehicle weight rating of 14,000 pounds or less, and $10,000 for clean-fuel vehicles with a gross vehicle weight rating of more than 14,000 pounds); and

- 50% of the cost of new clean-fuel refueling property used in a trade or business and located in New York State and for which a deduction is allowed under Internal Revenue Code section 179-A (with no limitation on the amount of the credit).

"Clean-fuel" means natural gas, liquefied petroleum gas, hydrogen, electricity, and any other fuel that is at least 85%, singly or in combination, methanol, ethanol, any other alcohol, or ether.

The credit is not refundable, but any credit not used can be carried over for an unlimited number of years. The total credit available in any particular taxable year, including any carryovers from prior years, cannot reduce the tax to less than the applicable minimum tax imposed under Article 9 or 9-A. In addition, recapture of the credit may be required if the property for which the credit is claimed ceases to qualify. (Chapter 389, Laws of 1997)

Credit for Employers Who Hire Persons With Disabilities

For tax years beginning on or after January 1, 1998, a tax credit of up to $2,100 per employee is available to employers who employ individuals with disabilities. The credit is available to employers who are subject to tax under Article 9, 9-A, 32 or 33 of the Tax Law.

A taxpayer is allowed the credit for employing a qualified employee within New York State. A "qualified employee" is an employee who:

- qualifies as a "vocational rehabilitation referral" for purposes of the federal work opportunity credit (Internal Revenue Code § 51);

- has worked for the employer on a full-time basis for at least 180 days or 400 hours; and

- is certified by the New York State Education Department or, in the case of a visual handicap, by the New York State Commission for the Blind and Visually Handicapped (in cooperation with these agencies, the New York State Department of Labor currently administers the certification program; for information about certifications, call 1-800-472-8612):

    (1) as a person with a disability that constitutes or results in a substantial handicap to employment; and

    (2) who has completed or is receiving services under an individualized written rehabilitation plan approved by the New York State Education Department or the New York State Commission for the Blind and Visually Handicapped.

The New York credit amount is 35% of the eligible wages paid to a qualified employee. As long as the federal work opportunity credit is operative, eligible wages for the New York credit are the first $6,000 of "qualified second-year wages." If the federal credit lapses, eligible wages for the New York credit are the first $6,000 of "qualified first-year wages." "Qualified first-year wages" are wages paid or incurred by the taxpayer during the taxable year, to a qualified employee for services rendered during the one-year period beginning with the date the employee begins work for the taxpayer. "Qualified second-year wages" are wages paid or incurred by the taxpayer during the taxable year, to a qualified employee for services rendered during the one-year period beginning one year after the employee begins work for the taxpayer.

The New York credit is available for employees who begin work for a taxpayer on or after January 1, 1997. The federal credit is currently operative and applies to employees who begin work on or before June 30, 1998. Accordingly, the New York credit for employees who begin work between January 1, 1997 and June 30, 1998 is based on their qualified second-year wages. For employees who begin work after June 30, 1998, and assuming the federal credit is not extended, the New York credit will be based on their qualified first-year wages. If the federal credit is extended so that these employees are eligible for the federal credit, the New York credit will be based on their qualified second-year wages.

This credit cannot reduce the tax to less than the applicable minimum tax imposed under Article 9, 9-A, 32 or 33. In addition, the credit is not refundable but any credit not used can be carried over for an unlimited number of years. (Chapter 142, Laws of 1997)

INSURANCE TAX

Captive Insurance Companies

Article 33 of the Tax Law has been amended to include a "captive insurance company" within the definition of "insurance corporation." Captive insurance companies will be subject to a special premiums tax in lieu of the premiums and "income-based" tax that applies to other insurers. The tax imposed on such companies will be the greater of the sum of the special premiums tax computed on gross direct premiums and reinsurance premiums, or $5,000. Such companies also may not be included in a combined return and may not claim credits against tax liability. The provisions relating to the tax on captive insurance companies apply to taxable years beginning on or after January 1, 1998. (Chapter 389, Laws of 1997)

Life Insurance Companies

The tax rate for the premiums tax imposed on life insurance corporations under Article 33 of the Tax Law has been reduced from .8% on gross direct premiums to .7% on such premiums received in tax periods beginning on or after January 1, 1998. Also, for taxable years beginning on or after January 1, 1998, the rate of the limitation on tax under section 1505 for life insurance corporations will decrease from 2.6% to 2.0% on gross direct premiums. In addition, effective for taxable years beginning on or after January 1, 1999, the required first installments of estimated tax and estimated MTA tax surcharge paid by life insurance corporations will increase from 25 percent to 40 percent of the preceding year's tax and tax surcharge, respectively. (Chapter 389, Laws of 1997)

Credit for Certain Investments in Certified Capital Companies

A new tax credit has been added to Article 33 of the Tax Law which will be equal to 100 percent of a taxpayer's investment of certified capital in certified capital companies (CAPCO) established pursuant to section 11 of the Tax Law. The credit must be claimed over 10 years with 10 percent allowed each year. Any credits not used can be carried over for an unlimited number of years. The total credit available in any particular taxable year, which is the combination of the 10 percent allowed for that year plus any carryovers from prior years, cannot reduce the tax below the fixed dollar minimum tax of $250. The credit is allowable for taxable years beginning after 1998, but may be based on investments of certified capital made in 1998. The amount of credits that may be claimed by an insurance company or an affiliated group of insurance companies is capped at $10 million annually. Insurance companies will be required to recapture the amount of credits claimed and forfeit the amount of unclaimed credits if the CAPCO in which it invests does not meet performance standards set forth in Section 11 of the Tax Law. (Chapter 389, Laws of 1997)

OTHER

Net Operating Loss - Bank Tax

A deduction is available to banking corporations taxable under Article 32 of the Tax Law for net operating losses sustained in tax years beginning on or after January 1, 2001. The deduction may not exceed the allowable federal net operating loss deduction augmented by the excess of the New York bad debt deduction over the federal bad debt deduction. No carryback of these losses is allowed. However, the losses may be carried forward for the period allowed under Internal Revenue Code section 172. (Chapter 389, Laws of 1997)

Fulfillment Services

Effective September 1, 1997, a foreign corporation that uses a New York fulfillment service business (other than that of an affiliated entity) will not, as a result, have nexus with New York State for purposes of the Article 9-A Franchise Tax on Business Corporations. Fulfillment services include the following activities performed for a customer: accepting orders and responding to consumer inquiries either electronically or by mail, telephone, telefax or the Internet; billing and collection activities; or the shipment of orders from an inventory of products held in New York and offered for sale by the purchaser of such fulfillment services. (Chapter 681, Laws of 1997)

S Corporation Status

For tax years beginning on or after January 1, 1998, tax-exempt organizations which are shareholders of a federal S corporation, and which are subject to the New York tax on unrelated business income under Article 13 of the Tax Law (nonprofit organizations and pension plans), may make the New York S election with respect to such corporation. (Chapter 389, Laws of 1997)

MTA Surcharge

The MTA surcharges imposed under Articles 9, 9-A, 32 and 33 of the Tax Law have been extended through taxable years ending prior to December 31, 2001 (through taxable months ending on or before June 30, 2001, for the surcharge on the tax on gas importation under section 189 of Article 9 of the Tax Law). For purposes of computing the MTA surcharges on the taxes imposed by sections 184, 186-a and 186-e of Article 9 of the Tax Law, the surcharges shall be computed as if the rate reductions described in the chart below (see page 6) had not occurred. (Chapters 59 and 389, Laws of 1997)

Cooperative Corporations Law (CCL)

A qualification for certain cooperative corporations to be able to pay an annual fee of $10 in lieu of all franchise, license or corporation taxes has been amended. Such tax treatment applies to a cooperative corporation that has been organized without capital stock for the purpose of producing and/or distributing district heating and/or cooling service solely for the use of its members and qualifies under Internal Revenue Code section 501 (c) (12). As of January 1, 1998, the requirement that 50% of heating and/or cooling service be distributed to members that are governmental entities, charitable organizations or cooperative corporations is reduced to 35%. (Chapter 330, Laws of 1997)

Utility Tax Rate Changes

The tax rates for taxes imposed under sections 184 (additional franchise tax on transportation and transmission corporations and associations) , 186-a (tax on the furnishing of utility services) and 186-e (excise tax on telecommunication services) have been reduced as follows:

	For taxable years ending before January 1, 2000	**For taxable years ending in 2000**	**For taxable years beginning on or after January 1, 2001**
Section 184 (except trucks and railroads)	3/4%	9/16% (blended rate resulting from decrease from 3/4% to 3/8% on July 1, 2000)	3/8%
Section 184 (trucks and railroads)	6/10%	39/80% (blended rate resulting from decrease from 6/10% to 3/8% on July 1, 2000)	3/8%

	Percentage of Gross Income (Gross Receipts for 186-e) Prior to October 1, 1998	**Percentage of Gross Income (Gross Receipts for 186-e) for October 1, 1998 through December 31, 1999**	**Percentage of Gross Income (Gross Receipts for 186-e) After 1999**
Section 186-a	3 1/2%	3 1/4%	2 1/2%
Section 186-e	3 1/2%	3 1/4%	2 1/2%

(Chapter 389, Laws of 1997)