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

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Corporation Tax
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1998 Summary of Corporation Tax Legislative Changes

In 1998, Governor George E. Pataki signed several new chapters into law. These enactments primarily reduce tax rates, provide various tax exemptions and a provision for gain deferral, expand current tax credits, and create new tax credits to enhance the financial services and emerging technology industries in New York State. This memorandum briefly summarizes these legislative changes.

Article 9-A Franchise Tax Rate Reductions

Entire Net Income (ENI) Base

The tax rates on the ENI base have been reduced as follows:

General Business Taxpayers [1]

Tax Year Beginning	Tax Rate
Before July 1, 1999	9 %
After June 30, 1999, and before July 1, 2000	8½ %
After June 30, 2000, and before July 1, 2001	8 %
After June 30, 2001	7½ %

Small Business Taxpayers [2]

(ENI base of **not** more than $200,000)

Tax Year Beginning	Tax Rate
Before July 1, 1999	8 %
After June 30, 1999	7½ %

(ENI base of more than $200,000 but **not** more than $290,000)

Before July 1, 1999	$16,000 plus 9 % of excess of ENI base over $200,000, plus 5 % of excess of ENI base over $250,000

After June 30, 1999, and before July 1, 2000	$15,000 plus 8½ % of excess of ENI base over $200,000 plus 5 % of excess of ENI base over $250,000.
After June 30, 2000, and before July 1, 2001	$15,000 plus 8% of excess of ENI base over $200,000, plus 2½ % of excess of ENI base over $250,000
After June 30, 2001	7½ % of ENI base

Fixed Dollar Minimum Tax

The fixed dollar minimum tax is lower for taxpayers with a gross payroll of $500,000 or less. The fixed dollar minimum tax is computed as follows:

Gross Payroll	Tax years beginning after June 30, 1998, and before July 1, 1999.	Tax years beginning after June 30, 1999
$6,250, 000 or more	$1500	$1500
More than $1,000,000 but less than $6,250,000	$425	$425
More than $250,000 but not more than $1,000,000	$325	
More than $500,000 but not more than $1,000,000		$325
More than $250,000 but not more than $500,000		$225
$250,000 or less	$100	$100

The $800 fixed dollar minimum tax imposed on taxpayers that have gross payroll, total receipts, and average value of assets each of not more than $1,000 is unchanged.

Minimum Taxable Income Base

The tax rate for the minimum taxable income base has also been reduced. The new rates and effective dates are as follows:

Tax Year Beginning	Tax Rate
After 1994 and before July 1, 1998	3½ %
After June 30, 1998, and before July 1, 1999	3¼ %
After June 30, 1999	3 %

MTA Surcharge

The Article 9-A franchise tax rate reductions described above do not apply when computing the MTA surcharge. The 1998 amendments to the Tax Law provide that for taxable years beginning on or after July 1, 1998, the MTA surcharge shall be computed as if the rate reductions had not occurred. Therefore, the MTA surcharge, as well as any estimated payments of MTA surcharge, are to be computed based on the franchise tax rates in effect for the period July 1, 1997, through June 30, 1998.

New York S Corporations

The Article 22 tax equivalent rate used in the computation of the Article 9-A franchise tax on New York S corporations has been reduced to conform to the C corporation rate reductions. These deductions yield New York S corporation tax rates as follows:

General Business Taxpayers[1]

Tax Year Beginning	Tax Rate
Before July 1, 1999	1.125 %
After June 30, 1999, and before July 1, 2000	.975 %
After June 30, 2000, and before July 1, 2001	.825 %
After June 30, 2001	.65 %

Small Business Taxpayers [2]

Tax Year Beginning	Tax Rate
Before July 1, 1999	.125 %
After June 30, 1999	.05 %*

* The tax rate of .05 % applies to a small business taxpayer having ENI base of not more than $200,000. For a small business taxpayer with ENI base of more than $200,000 but not more than $290,000, the taxpayer computes its tax under Article 9-A and subtracts its Article 22 tax equivalent. The Article 22 tax equivalent is the sum of (i) $14,900, (ii) 6.85% of the first $50,000 in excess of the ENI base over $200,000, and (iii) 3.85% of the excess of the ENI base over $250,000.

(See Tax Law, section 210.1.)

Investment Tax Credit for the Financial Services Industry (Articles 9-A and 32)

The current investment tax credit (ITC) under Article 9-A has been expanded to include, as qualified property, property used in the financial services industry. A similar ITC is provided for this qualified property located in an economic development zone. The credits are available for qualified property placed in service on or after October 1, 1998, and before October 1, 2003.

Qualified property now includes property principally used in the ordinary course of the taxpayer's trade or business:

- as a broker or dealer in connection with the purchase or sale of stocks, bonds, or other securities (as defined in Internal Revenue Code (IRC) section 475(c)(2)), or of commodities (as defined in IRC section 475(e)), or in providing lending, loan arrangement or loan origination services to customers in connection with the purchase or sale of securities (as defined in IRC section 475(c)(2));

- of providing investment advisory services for a regulated investment company as described in IRC section 851.

In addition, qualified property now includes property principally used in the ordinary course of the taxpayer's business as an exchange registered as a national securities exchange (such as the New York stock exchange) or a board of trade defined under the New York Not-For-Profit Corporation Law, or an entity wholly owned by one or more national security exchanges or boards of trade that provides automation or technical services to the national security exchanges or boards of trade.

Property purchased by a taxpayer affiliated with a regulated broker, dealer, or national securities exchange or board of trade, or property leased by a taxpayer to an affiliated regulated broker, dealer, national securities exchange or board of trade is eligible for this credit if the property is used by the affiliate in an activity described above.

The credit is not allowed unless all or substantially all of the taxpayer's or affiliate's employees performing the administrative and support functions resulting from or relating to the qualifying uses of the property are located in New York State.

A new ITC was added to Article 32 for qualified property used by banking corporations in providing financial services. The credit's basic provisions are similar to those of the Article 9-A ITC for the financial services industry.

(See Tax Law sections 210.12, 210.12-B, and 1456 (i).)

Qualified Emerging Technology Tax Credits (Article 9-A Taxpayers Only)

For tax years beginning on or after January 1, 1999, two new tax credits have been created for Article 9-A taxpayers, the Qualified Emerging Technology Company Employment Credit and the Qualified Emerging Technology Company Capital Tax Credit. A *qualified emerging technology company* is a company that is located in New York State, that has total annual product sales of $10 million or less, and meets either of the following criteria: (1) its primary products or services are classified as emerging technologies; or (2) it has research and development activities in New York State and its ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified (as determined by the National Science Foundation in the most recently published results from its survey of industry research and development, or a comparable successor survey as determined by the Department).

Article 22 taxpayers that are partners in a partnership (including members of an LLC, if that LLC is treated as a partnership for federal tax purposes) or shareholders of a New York S corporation, **cannot** claim these credits against the Article 22 personal income tax.

The Qualified Emerging Technology Company Employment Credit grants a credit of $1,000 per full-time employee that a qualified emerging technology company employs in excess of 100% of the company's base year employment. Generally, *base year employment* means the average number of individuals employed full-time by the taxpayer in this state during the three taxable years immediately preceding the first taxable year in which the credit is claimed.

The credit is available for up to three years. The credit may not reduce the tax below the higher of the fixed dollar minimum or the alternative minimum tax. Any unused credit may be carried over indefinitely. In addition, a taxpayer qualifying as a new business may elect to have the carryover refunded.

(See Tax Law, section 210.12-E.)

The Qualified Emerging Technology Company Capital Tax Credit provides a credit of 10% of investments in qualified emerging technology companies held for four years from the close of the tax year and 20% for investments held for nine years. The credit is claimed in the year the investment is initially made. Investments made by or on behalf of an owner of the business are ineligible. The total credit allowable to a taxpayer for all years may not exceed $150,000 for the four-year investments and $300,000 for the nine-year investments.

The credit may not reduce the tax below the higher of the fixed dollar minimum or the alternative minimum tax. The amount of the credit including carry-overs of the credit deducted from the tax otherwise due may not, in the aggregate, exceed 50% of the tax imposed (before credits) under section 209 of the Tax Law. The credit is not refundable, however any unused credit may be carried over indefinitely. If a taxpayer disposes of or recovers a qualified investment, a recapture of some or all of the credit is required.

(See Tax Law, section 210.12-F.)

Qualified Emerging Technology Investments - Deferred Gains
(Articles 9-A, 32 and 33)

A deferral of gain on the sale of a qualified emerging technology investment (QETI) is available to taxpayers taxable under Articles 9-A, 32, or 33 for a QETI that is (1) held for more than 36 months and (2) rolled over into the purchase of a replacement QETI within 365 days. Gain deferred under this provision must be recognized when the replacement QETI is sold. However, gain on the sale of the replacement QETI can be deferred if another replacement QETI is acquired within 365 days. The deferral applies to investments sold on or after March 12, 1998.

A QETI is an investment in the stock of a corporation or an ownership interest in a partnership or LLC that is a qualified emerging technology company (see definition above). A QETI is also an investment in a partnership or an LLC to the extent that the partnership or LLC invests in qualified emerging technology companies. The investment must be acquired by the taxpayer (1) as original issue from the company, either directly or through an underwriter, and in exchange for cash, services, or property (but not stock), or (2) from a person who acquired the investment as provided in (1).

(See Tax Law, sections 208.9 (l), 1453 (p) and 1503 (12).)

Farmers’ School Tax Credit (Article 9-A)

For tax years beginning on or after January 1,1998, the base acreage used to compute the farmers’ school tax credit has been increased from 175 acres to 250 acres.

For tax years beginning on or after January 1, 1999, the term *eligible farmer* has been expanded to include farmers who have paid school district property taxes on qualified agricultural property pursuant to a land contract for the future purchase of such qualified property. These eligible farmers now qualify for the credit where previously the credit could only be claimed for school taxes paid on qualified agricultural property owned by the farmer.

(See Tax Law, section 210.22.)

Landlords and the Utility Tax (Article 9, Section 186-a)

Effective January 1, 1998, gross income and gross operating income subject to tax under section 186-a include receipts from sales of utility services to a landlord that are resold to the landlord's tenants as an incident to the landlord's rental activities. These receipts are subject to tax under section 186-a even though the utility services are not for ultimate consumption or use by the landlord.

Landlords are no longer subject to this tax unless the landlord is the producer of the utility service being resold, or the landlord is reselling utility services that did not include the section 186-a tax. In the latter instance, the tax is based on the landlord's cost of the utility services being resold, not on the landlord's receipts from such sales.

For purposes of this section, *utility services* means the furnishing of gas, electricity, steam, water, or refrigeration, and services directly connected to the furnishing of gas, electricity, steam, water, or refrigeration.

(See Tax Law, section 186-a (2).)

Fulfillment Services (Article 9-A)

A foreign corporation does not have nexus with New York State when its only activity in New York is using a New York fulfillment service business if the fulfillment service business is not an affiliated person with respect to the foreign corporation. For tax years beginning on and after August 1, 1998, a fulfillment service business and a foreign corporation are affiliated persons with respect to each other if:

- the foreign corporation , directly or indirectly, owns more than a five percent interest in the New York fulfillment service; or

- the New York fulfillment service , directly or indirectly, owns more than a five percent interest in the foreign corporation; or

- another person, directly or indirectly, owns more than a five per cent interest in both the foreign corporation and the New York fulfillment service; or

- a group of persons that are affiliated persons with respect to each other, directly or indirectly, owns more than a five per cent interest in both the foreign corporation and the New York fulfillment service.

From September 1, 1997 through tax years beginning before August 1, 1998, persons were affiliated persons with respect to each other if either was a majority owner, directly or indirectly, of the other.

(See Tax Law, section 209.2.)

Tax Exemption for Offshore Investors (Articles 9-A and 32)

For tax years beginning on or after January 1, 1998, an alien corporation is exempt from the Article 9-A franchise tax if its activities are limited solely to investing or trading in stocks and securities for its own account pursuant to IRC section 864(b)(2)(A)(ii), or investing or trading in commodities for its own account pursuant to IRC section 864(b)(2)(B)(ii), or any combination of these activities. A similar exemption is provided under Article 32 of the Tax Law for alien banking corporations. However, these corporations may still be subject to the section 181 license fee, which is generally applicable to every foreign corporation doing business in New York State.

An *alien corporation* is defined as a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States.

(See Tax Law, sections 209.2-a and 1452 (g).)

Certified Capital Company (CAPCO) Credits (Article 33)

For tax years beginning after 1998, insurance companies that invest in Certified Capital Companies (CAPCOs) are provided with credits generally equal to their investments. A CAPCO is a company that meets the requirements of section 11 of the Tax Law and is certified by the Superintendent of Insurance. A recapture of these credits is required when the CAPCO is decertified by the Superintendent of Insurance because it has failed to meet certain requirements, including mandated investment levels, or the CAPCO's certification is revoked because it made a material misrepresentation of the facts on its application. (See TSB-M-98(2)C)

Section 1511(k) of the Tax Law has been amended, effective August 4, 1998, to add a time limitation within which a recapture of these credits can be required where the Superintendent of Insurance has revoked the CAPCO's certification. The Tax Law now provides that the credits can only be recaptured if the revocation occurs within the later of three years after the CAPCO's certification or when the CAPCO reaches the mandated 50% investment level (generally, within four years).

This section of the Tax Law was also amended to make it clear that tax credits may not be recaptured as a result of the decertification of the CAPCO after the mandated investment levels have been met. However, recapture will be required if the CAPCO is decertified within the first two years because of a material violation of the CAPCO provisions or because it has failed to meet the first mandated investment level of 25%. Recapture will also be required if the CAPCO is decertified because it has failed to meet the second and third mandated investment levels of 40% and 50%, respectively.

(See Tax Law, section 1511 (k).)

Endnotes

1. *General business taxpayers* means all taxpayers other than small business taxpayers.

2. *Small business taxpayer* means a taxpayer (i) which has entire net income of not more than $290,000 for the taxable year; (ii) which constitutes a small business as defined in section 1244(c)(3) of the Internal Revenue Code (without regard to the second sentence of subparagraph (A) thereof) as of the last day of the taxable year; and (iii) which is not part of an affiliated group, as defined in section 1504 of the Internal Revenue Code, unless such group, if it had filed a report under this article on a combined basis, would have itself qualified as a small business taxpayer.