

**Supplemental Summary of Personal Income Tax
Legislative Changes Enacted in 2003**

This TSB-M is the summary of personal income tax legislation enacted in 2003 which was not addressed in TSB-M-04(1)I, *Revised Summary of Personal Income Tax Legislative Changes Enacted in 2003*.

The following legislative changes are summarized in this memo:

- Extension of the city of Yonkers personal income tax surcharge on residents and nonresident earnings tax;
- Revisions to the New York State college choice tuition savings program;
- Taxation of certain resident trusts;
- Brownfields cleanup credits;
- Enhancement of farmers school tax eligibility; and
- Abatement of interest attributable to misappropriated payments.

City of Yonkers personal income tax surcharge on residents and nonresident earnings tax

The Yonkers personal income tax surcharge on residents and the Yonkers nonresident earnings tax have been extended through taxable years ending on or before December 31, 2005. The Yonkers resident income tax surcharge is currently at the rate of 5% of the net state tax. The city of Yonkers nonresident earnings tax, imposed on the wages earned and net earnings from self-employment of nonresident individuals, estates and trusts, is currently at the rate of .25%.

(Tax Law, section 1321; Codes and Ordinances of the City of Yonkers, section 15-100)

College choice tuition savings program

The Education Law and the Tax Law have been amended by Chapter 593 of the Laws of 2003 to conform certain New York State College Choice Tuition Savings Program Act requirements to requirements added to the Internal Revenue Code and to improve the effectiveness of New York's College Savings Program (program).

The Education Law was amended to change the definition of the term *account owner* to mean a person, rather than an individual, who enters into a tuition savings agreement. The term *person* includes not only individuals, but also trusts, estates, partnerships, associations, companies or corporations.

Additional amendments were made to the Education Law to:

- delete the requirement for program applications to include a certification relating to no excess contributions;
- delete provisions specifying procedures for making qualified withdrawal determinations;
- delete provisions regarding the imposition of a penalty for non-qualified withdrawals;
- change the \$100,000 account balance limit to a *maximum account balance*, which is annually established by the program, to more accurately reflect the cost of a four-year undergraduate education; and
- delete the requirement for an account to be open for three years before a qualified withdrawal can be made.

The Tax Law was amended to provide that intra-program transfers do not constitute *excess distributions* for purposes of the income tax addition modification relating to distributions from the program. As a result, the amount of any intra-program transfer does not have to be added to federal adjusted gross income in computing a taxpayer's New York adjusted gross income. (Note: This amendment reflects the current Tax Department position that intra-program transfers do not constitute excess distributions.)

These provisions are effective immediately.

(Education Law, sections 695-b(2), 695-e; Tax Law, section 612(b)(34))

Taxation of certain trusts

Chapter 658 of the Laws of 2003 amended the Tax Law to provide that a resident trust is not subject to the personal income tax under Article 22 of the Tax Law if the following conditions are met:

- all the trustees are domiciled in a state other than New York;
- the entire corpus of the trust, including real and tangible property, is located outside New York State; and
- all income and gains of the trust are derived from or connected with sources outside New York State.

Additionally, the amendment provides that where a trustee is a banking corporation domiciled outside New York State at the time it became a trustee, it shall be deemed to continue to be a trustee domiciled outside New York State regardless of the fact that thereafter the bank is domiciled in New York State by reason of being acquired by, or becoming an office or branch of, a corporation which is domiciled within New York State.

These provisions are effective immediately and apply to tax years beginning on or after January 1, 1996.

(Tax Law, section 605(b)(3); Administrative Code of the City of New York, section 11-1705(b)(3))

Tax provisions of the brownfields cleanup legislation

Sections 21, 22, and 23 were added to the Tax Law to provide for three new tax credits relating to the clean-up and remediation of brownfields. The credits are refundable, and apply to tax years beginning on or after April 1, 2005.

Section 21 provides for the *Brownfield Redevelopment Tax Credit*. This credit consists of the sum of three credit components relating to costs associated with site preparation, tangible property, and on-site groundwater remediation.

Section 22 provides for the *Tax Credit for Remediated Brownfields*. This credit is for real property taxes paid with respect to qualified sites.

Section 23 provides for the *Environmental Remediation Insurance Credit*. This credit is for premiums paid by the taxpayer for environmental remediation insurance on or after the date of the brownfield site agreement executed by the taxpayer and the Department of Environmental Conservation.

(Tax Law, sections 21, 22, 23, and 606)

Farmers' school tax credit eligibility enhanced

The Tax Law has been amended to allow a taxpayer the option of using a three-year average of federal gross income from farming in determining if the taxpayer is an *eligible farmer* for purposes of claiming the farmers' school tax credit.

Prior to the amendment, taxpayers met the definition of *eligible farmer* only if their federal gross income from farming for the tax year was at least two-thirds of their excess federal gross income.

For tax years beginning on or after January 1, 2003, taxpayers will meet the definition of *eligible farmer* if their:

- federal gross income from farming for the tax year is at least two-thirds of their excess federal gross income; or
- average of federal gross income from farming for the tax year and the two consecutive tax years immediately preceding that tax year is at least two-thirds of their excess federal gross income for the tax year.

See publication 51, *Questions and Answers on New York State's Farmers' School Tax Credit*, and Publication 51.1, *Update to Publication 51*, for more information on the credit.

(Tax Law, section 606(n))

Abatement of interest attributable to misappropriated payments

The Tax Law was amended to authorize the Commissioner of Taxation and Finance to abate interest with respect to misappropriated payments where a taxpayer's payment is misappropriated through no fault of the taxpayer or the department. (See TSB-M-03(6)C, TSB-M-03(7)I, TSB-M-03(7)S, TSB-M-03(6)M, TSB-M-03(6)R, *Legislative Amendment Relating to the Abatement of Interest Attributable to Misappropriated Payments*.)

(Tax Law, section 3008(d))