

Summary of Personal Income Tax Legislative Changes Enacted in 2006

This memorandum contains brief summaries of the personal income tax changes that are part of the 2006-2007 New York State budget bills and other recently enacted legislation (Chapters 35, 58, 61, 62, 105, 109, 251, 420, 440, 522, 547 and 565 of the Laws of 2006).

Empire State child credit

A new section 606(c-1) was added to the Tax Law to provide for an Empire State child credit for tax years beginning on or after January 1, 2006. The credit is a refundable tax credit available to full-year New York State residents and is equal to the greater of 33% of the portion of the federal child tax credit attributable to qualifying children, or \$100 times the number of qualifying children.

The federal child tax credit is reportable on federal forms 1040 and 1040A as the child tax credit and the additional child tax credit.

The Empire State child credit for a taxpayer whose federal child tax credit is limited because his or her federal adjusted gross income exceeds a particular amount is 33% of the portion of the federal child tax credit attributable to qualifying children.

A *qualifying child* is a child who: (1) meets the definition of a qualifying child under the federal child tax credit (see section 24(c) of the Internal Revenue Code) and (2) is at least four years of age on December 31st of the tax year. (There is no minimum age for the federal child tax credit.)

Married taxpayers who file a joint federal return but who are required to file separately for New York State purposes because one spouse is a full-year New York State resident and the other spouse is either a part-year resident or nonresident may elect to divide the credit in any manner they choose. This is the only situation in which the credit, or any portion of the credit, may be claimed by a part-year resident or a nonresident.

(Tax Law, section 606(c-1))

Standard deduction increase

Effective for tax years beginning after 2005, the standard deduction for married taxpayers filing jointly and surviving spouses is increased from \$14,600 to \$15,000, and the standard deduction for married taxpayers filing separately is increased from \$6,500 to \$7,500.

(Tax Law, sections 614(b) and 614(d))

New York State organized militia subtraction modification

Section 612(c)(8-b) of the Tax Law was amended to provide that an individual who is a member of the New York State organized militia called to active duty to perform active service of the United States, other than training, within New York State pursuant to federal active duty orders issued in accordance with Title 10 of the United States Code is allowed to subtract the compensation attributable to such service from his or her federal adjusted gross income in computing his or her New York adjusted gross income.

As a result, in determining New York adjusted gross income, an individual's federal adjusted gross income may be reduced by the amount of income he or she received as a member of the New York State organized militia for performing active service within New York State due to:

- state active duty orders issued under section 6.1 of the New York Military Law, or
- active service of the United States pursuant to federal active duty orders, for service other than training, issued under Title 10 of the United States Code.

Previously, the subtraction modification was provided only to members of the New York State organized militia for performing active service within New York State due to state active duty orders issued under section 6.1 of the Military Law.

Members of the New York State organized militia include the New York Army National Guard, the New York Air National Guard, the New York Naval Militia, and the New York Guard.

This provision applies to tax years beginning on or after January 1, 2004.

For further information regarding filing amended returns, see Notice N-06-9, *Personal Income Tax Relief Retroactive to 2004 for Members of the New York State Organized Militia*.

(Tax Law, section 612(c)(8-b))

Conservation easement tax credit

Section 606(kk) was added to the Tax Law to allow a taxpayer who owns land that is subject to a conservation easement held by a public or private conservation agency a refundable tax credit equal to 25% of the allowable school district, county, and town real property taxes on such land.

A *conservation easement* is a perpetual and permanent conservation easement, as defined in Article 49 of the Environmental Conservation Law (ECL), that serves to protect open space, scenic, natural resources, biodiversity, agricultural, watershed and/or historic preservation resources.

Any conservation easement for which a tax credit is claimed must be filed with the Department of Environmental Conservation and must comply with the provisions of Title 3 of Article 49 of the ECL and section 170(h) of the Internal Revenue Code. Dedications of land for open space through the execution of conservation easements for the purpose of fulfilling density requirements to obtain subdivision or building permits are not considered conservation easements for this credit.

Land means a fee simple title to real property located in this state, with or without improvements thereon; rights of way; water and riparian rights; easements; privileges and all other rights or interests of any land or description in, relating to or connected with real property, excluding buildings, structures, or improvements.

A public or private conservation agency is any state, local, or federal governmental body or any private not-for-profit charitable corporation or trust that is authorized to do business in the state of New York and is: (1) organized and operated to protect land for natural resources, conservation, or historic preservation purposes, (2) exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, and (3) has the power to acquire, hold, and maintain land and/or interests in land for such purposes.

When claiming the credit the following limitations apply:

- The credit, when combined with any other credit for such school district, county, and town real property taxes, may not exceed such taxes.
- The amount of the credit claimed may not exceed \$5,000 in any given year.

This provision applies to tax years beginning on or after January 1, 2006.

(Tax Law, section 606(kk))

Brownfield tax credits

The definition of *environmental zones* (EN-Zones) used to determine eligibility for enhanced brownfield tax credits was amended. Qualified sites that are the subject of a brownfield site cleanup agreement entered into prior to September 1, 2010, and that meet certain requirements may qualify as environmental zone sites. Previously, the Tax Law required that the agreement be entered into prior to September 1, 2006, to qualify. This provision took effect April 28, 2006.

In addition, the definition of *qualified tangible property* was amended for purposes of the tangible property credit component of the brownfield redevelopment tax credit. New criteria were added that would allow property to qualify for the credit if it is: acquired by purchase; located on a qualified brownfield site in New York State; and part (or when occupied becomes part) of a dwelling whose primary ownership structure is covered under either Article 9-B of the Real Property Law (Condominium Act) or meets the requirements of section 216(b)(1) of the

Internal Revenue Code as a cooperative housing corporation. The property qualifying under the new criteria will be deemed to be qualified tangible property and will be deemed to be placed in service when a certificate of occupancy is issued for such property. This provision took effect July 26, 2006.

(Tax Law, sections 21(b)(3), 21(b)(6), and 22(a))

Farmers' school tax credit

Section 606(n) of the Tax Law was amended to provide the following enhancements to the farmers' school tax credit, effective for tax years beginning on or after January 1, 2006:

- The base acreage available to farmers in calculating their tax credit has been increased to 350 acres, up from the current limit of 250 acres.
- The modified New York State adjusted gross income limitation amount has increased from \$100,000 to \$200,000. Farmers with modified New York State adjusted gross income in excess of \$200,000 are subject to a phaseout of the tax credit.
- Gross income received from the growing of Christmas trees, for purposes of transplanting or cutting, under a managed Christmas tree operation, qualifies as federal gross income from farming.
- Article 22 shareholders of a C corporation may elect to take into account their pro rata shares of the corporation's income and principal payments on farm indebtedness for purposes of the credit. If the shareholder is an S corporation, it shall pass through such inclusions in pro rata shares to its shareholders for purposes of their calculation of the credit. The election is effective only if shareholders holding more than one-half, by vote and value, of the shares of stock of the corporation on the day of the election so elect.
- The definition of *qualified agricultural property* has been expanded to include land that meets the eligibility requirements at the time it becomes subject to a conservation easement.

For further information regarding this credit, see Publication 51, *Questions and Answers on New York State's Farmers' School Tax Credit* and Publication 51.1, *Update to Publication 51 Questions and Answers on New York State's Farmers' School Tax Credit*.

(Tax Law, section 606(n))

Stock options

Sections 631(g) and 638(c) were added to the Tax Law. These sections require nonresident and part-year resident taxpayers who have been granted stock options, restricted stock, or stock appreciation rights and who performed services within New York State during the grant period to allocate to New York State their compensation income attributable to the stock

options, restricted stock, or stock appreciation rights according to regulations prescribed by the Commissioner of Taxation and Finance.

The legislation required the Commissioner to propose regulations regarding the allocation of such compensation income within 180 days of the effective date of the law (by October 23, 2006). The stock option regulations were formally proposed by the Commissioner on October 10, 2006, and adopted on December 12, 2006. The new regulations apply to tax years beginning in 2006 and after.

(Tax Law, sections 631(g) and 638(c))

Office of Temporary and Disability Assistance refund offsets

The Tax Law was amended to make permanent the limitation on refund offsets for certain debts owed to the Office of Temporary and Disability Assistance (OTDA) for taxpayers who filed for and are eligible for the earned income tax credit.

This provision in the Tax Law was enacted in 2004 and placed a limitation of 10% on the amount of a tax overpayment that could be credited against a past due, legally enforceable debt owed to the OTDA for an overpayment of public assistance if the taxpayer filed for and is eligible for the earned income tax credit.

Prior to the amendment, this provision was scheduled to expire on December 31, 2006.

(Tax Law, section 171-f(5)(b-1))

Low-income housing credit

The New York State low-income housing tax credit program was established in 2000 to promote the construction and rehabilitation of low-income housing in New York State. The credit is similar to the federal low-income housing credit and is administered by the New York State Division of Housing and Community Renewal.

The Public Housing Law was amended to increase the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects from \$8 million to \$12 million per year.

This provision took effect April 28, 2006.

(Public Housing Law, section 22(4))

Volunteer firefighters' and ambulance workers' credit

A new section 606(e-1) was added to the Tax Law to provide a volunteer firefighters' and ambulance workers' tax credit for tax years beginning on or after January 1, 2007. The credit is a \$200 refundable tax credit available to each full-year New York State resident who serves as an active volunteer firefighter or a volunteer ambulance worker for the entire tax year for which the credit is claimed.

An *active volunteer firefighter* is a person who meets the definition of this term under section 215 of the General Municipal Law (GML). Section 215.1 of the GML states, "*Active volunteer firefighter* means a person who has been approved by the authorities in control of a duly organized volunteer fire company or volunteer fire department as an active volunteer firefighter of such fire company or department and who is faithfully and actually performing service in the protection of life and property from fire or other emergency, accident or calamity in connection with which the services of such fire company or fire department are required."

A *volunteer ambulance worker* is a person who meets the definition of this term under section 219-k of the GML. Section 219-k.14 of the GML states, "*Volunteer ambulance worker* means an active volunteer member of an ambulance company as specified on a list regularly maintained by the company for purposes of the volunteer ambulance workers' benefit law."

A taxpayer who receives a real property tax exemption under Title 2 of Article 4 of the Real Property Tax Law relating to such service is not eligible for the credit.

Taxpayers who file a joint return and who each qualify for the credit may both claim the credit on their joint return.

(Tax Law, section 606(e-1))

Empire State commercial production credit

New sections 28 and 606(jj) were added to the Tax Law to provide an Empire State commercial production tax credit. The credit is provided to a taxpayer that is a qualified commercial production company, or a partner of a partnership (including a member of a limited liability company that is treated as a partnership for federal income tax purposes) or a shareholder of a New York S corporation that is a qualified commercial production company. To be eligible for this credit, at least 75% of the production costs (excluding post-production costs) paid or incurred directly and predominately in the actual filming or recording of a qualified commercial must be incurred in New York State.

New York will provide \$7 million of credit annually to be disbursed to all eligible commercial production companies as follows:

- Three million dollars will be disbursed on a pro-rata basis to all eligible commercial production companies. The credit will be 20% of the qualified production costs attributable to the use of tangible property or the performance of services in New York in the production of a qualified commercial. Total qualified production costs must be greater in the current year than the average of the three previous years for which the credit was applied. However, until a qualified production company has established a three-year history for the credit, the benchmark for the credit will be the greater of the previous year's or the average of the two previous years' qualified production costs. If the qualified production company has never applied for the credit, the previous year's data will be used to create a benchmark. The credit is applied only to the excess of the current calendar year's costs over the previous calendar year's cost. No qualified production company will be allocated more than \$300,000 of credit annually. The credit is allowed for the tax year in which the production of the qualified commercial is completed.
- Three million dollars will be disbursed to all eligible commercial production companies that film or record qualified commercials within the metropolitan commuter transportation district (MCTD). The credit will be 5% of the qualified production costs attributable to the use of tangible property or the performance of services in New York in the production of the qualified commercial. Total qualified production costs in the current calendar year must be greater than \$500,000 and the credit applies only to such costs exceeding \$500,000.
- One million dollars will be disbursed to all eligible commercial production companies that film or record qualified commercials outside the MCTD. The credit will be 5% of the qualified production costs attributable to the use of tangible property or the performance of services in New York in the production of the qualified commercial. Total qualified production costs in the current calendar year must be greater than \$200,000, and the credit applies only to such costs exceeding \$200,000.

The amount of credit not applied to the tax in the current tax year (the excess credit) may be refunded or credited as an overpayment to next year's tax. The refund is limited to 50% of the excess credit in the current year; the balance may be carried forward to the following year and may be deducted from the tax in that year. The amount of the excess credit not applied to the tax in the next succeeding tax year will be credited or refunded (without interest). Production costs used as the basis for allowance of this credit or used in the calculation of this credit cannot be used to claim any other credit.

The Empire State commercial production tax credit will be administered by the New York State Governor's Office for Motion Picture and Television Development. For more information about this credit, contact that office by e-mail at nyfilm@empire.state.ny.us.

These provisions apply to tax years beginning on or after January 1, 2007, and expire on December 31, 2011.

(Tax Law, sections 28 and 606(jj)) [Note: There are two sections 28 and 606(jj).]

Biofuel production credit

Sections 28 and 606(jj) were added to the Tax Law to provide a biofuel production credit. The credit is a refundable tax credit and is allowed for biofuel produced at a biofuel plant located in New York State on or after January 1, 2006.

The biofuel production credit is equal to 15 cents for each gallon of biofuel produced at the biofuel plant after the production of the first 40,000 gallons per year presented to market. The biofuel production credit cannot exceed \$2.5 million per taxpayer per tax year and is allowed for no more than four consecutive tax years per biofuel plant.

Biofuel plant means a commercial facility located in New York State at which one or more biofuels are produced.

Biofuel means a fuel which includes biodiesel or ethanol. Biofuel may also include any other standard approved by the New York State Energy Research and Development Authority. *Biodiesel* means a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of American Society of Testing and Materials designation D 6751-02. *Ethanol* means ethyl alcohol manufactured in the United States and its territories and sold (i) for fuel use and which has been rendered unfit for beverage use in a manner approved by the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives and is produced at a facility approved by such Bureau for the production of ethanol for fuel, or (ii) as denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use.

A taxpayer must annually certify to the Commissioner that biofuel produced at the eligible biofuel plant meets all existing standards for biofuel and certify the amount of biofuel produced at the eligible biofuel plant during the tax year.

This provision applies to tax years beginning on or after January 1, 2006, and before January 1, 2013.

(Tax Law, sections 28 and 606(jj)) [Note: There are two sections 28 and 606(jj).]

Empire State film production credit

The Empire State film production credit was extended to include tax years ending on or before December 31, 2011. The aggregate amount of tax credits allowed has been increased from \$25 million to \$60 million for each calendar year.

For more information about this credit, contact the New York State Governor's Office for Motion Picture and Television Development by e-mail at nyfilm@empire.state.ny.us.

(Tax Law, sections 24 and 606(gg))

Qualified empire zone enterprise (QEZE)

The following is a summary of amendments made to the QEZE real property tax credit and the QEZE tax reduction credit.

The following provisions took effect June 23, 2006:

- A QEZE first certified between August 1, 2002, and March 31, 2005, that conducts its operations on real property located in an empire zone (EZ) that it owns or leases and that is subject to a brownfield site cleanup agreement (BCA) executed prior to January 1, 2006, will calculate the amount of QEZE real property tax credit using the credit calculation applicable to entities first certified on or after April 1, 2005.
- A QEZE first certified between August 1, 2002, and March 31, 2005, that conducts its operations on real property located in an EZ that it owns or leases and that is subject to a BCA will determine its employment test for purposes of the QEZE tax credits, by comparing its employment number in the EZs and in New York State during the current year to its employment number in the EZs and in New York State during the base period.
- A *clean energy enterprise* (as defined in section 959-b of the General Municipal Law) will determine its employment test, for purposes of the QEZE tax credits, by comparing its employment number in New York State in the current year to its employment number in New York State for the base period. In addition, for purposes of the QEZE tax reduction credit, the zone allocation factor for a clean energy enterprise will be 1.0 and, for purposes of the QEZE real property tax credit, a clean energy enterprise will be deemed to be located in an investment zone.

The following provision took effect June 23, 2006, and applies to all tax years that are open under the statute of limitations:

- The employment number for QEZEs in their first tax year that meet certain requirements will be computed for that first tax year by using only those employees employed full time on the last day of the short tax year. The QEZE must: (a) acquire real or tangible property during the first tax year from an entity that is an unrelated person; and (b) have a first tax year of not more than seven months in duration; and (c) have, on the last day of the first tax year, at least 190 full-time employees and substantially all of them were previously employed by the entity from which the taxpayer purchased its assets.

The following provisions took effect June 23, 2006. [Note: There were earlier versions of these provisions in effect from January 1, 2006 through June 22, 2006. See Chapters 61 and 62 of the Laws of 2006.]

- QEZEs that are owners of *qualified investment projects* (as defined under section 957(s) of the General Municipal Law (GML)) that have been approved by the Commissioner of Economic Development will be allowed an additional business tax benefit period for purposes of the QEZE credits. For these QEZEs, the business tax benefit period has been expanded to include the ten tax years starting with the tax year in which the business enterprise's benefit period commencement date occurs (but only for those years in which the employment test is met). The *benefit period commencement date* is either: (a) the business enterprise's date of certification under Article 18-B of the GML at the location of the qualified investment project; or (b) the date when property constituting a qualified investment project is first placed in service.

The benefit period commencement date will be determined by an election made by the business enterprise on its report for the tax year that includes the date of certification of the business enterprise at the location of the qualified investment project. If no election is made, the benefit period commencement date will be as described in clause (a) above.

- If a QEZE that is an owner of a qualified investment project is also approved by the Commissioner of Economic Development as the owner of a *significant capital investment project* (as defined under section 957(t) of the GML), the QEZE's business tax benefit period may be increased to include an additional ten tax years beginning with the tax year in which the significant capital investment project is placed in service. The property must be placed in service during the business enterprise's business tax benefit period as described above.
- If a QEZE is an owner of a qualified investment project, a significant capital investment project, or both, the business tax benefit period may extend beyond ten years. During the entire business tax benefit period, the benefit period factor will be 1.0.
- A business enterprise will be considered a new business for purposes of the QEZE tax reduction credit and QEZE real property tax credit if it: (a) is approved as the owner of a qualified investment project or a significant capital investment project; (b) has a base period of zero years; (c) placed in service property (or a project that includes such property) that comprises such qualified investment project or significant capital investment project; and (d) is certified under Article 18-B of the GML by December 31, 2007.

(Tax Law, sections 14(a), 14(b), 14(g), 14(j), 14(n), 15(b))

Empire zone wage tax credit

The following two amendments were made to the empire zone wage tax credit:

(1) For purposes of calculating the EZ wage tax credit amount, the requirement that an employee must receive empire zone wages for more than half of the tax year does not apply the first tax year a taxpayer is subject to tax if:

- the taxpayer acquired real or tangible personal property during its first tax year from an entity which is not a *related person* (as such term is defined in section 465(b)(3)(c) of the Internal Revenue Code);
- the first tax year of the taxpayer is a short tax year of not more than seven months in duration; and
- the taxpayer has, on the last day of its first tax year, at least 190 full-time employees and substantially all of them were previously employed by the entity from which the taxpayer purchased its assets.

For taxpayers meeting these criteria, the wage tax credit is calculated by using the number of individuals, excluding general executive officers, employed full time on the last day of the first tax year.

This amendment applies to all tax years that are open under the statute of limitations. An amended return must be filed to claim a credit or refund of any overpayment of tax for any open tax year. A claim for credit or refund of tax must be filed within three years from the date the return was filed, or within two years from the date the tax was paid, whichever is later.

(2) A clean energy enterprise certified under Article 18-B of the General Municipal Law is deemed to be located in an investment zone and may be eligible for the increased EZ wage tax credit for both qualified and targeted employees that earn wages in excess of \$40,000 for the tax year.

These provisions took effect June 23, 2006.

(Tax Law, sections 14 and 606(k))

Noncustodial parent New York State earned income tax credit

A new section 606(d-1) was added to the Tax Law to provide a noncustodial parent a New York State earned income tax credit (EITC) for tax years beginning on or after January 1, 2006, but before January 1, 2013. The credit is refundable and is allowed to a taxpayer who is a

full-year New York State resident, is 18 years of age or older, and meets the following additional requirements:

- the taxpayer is the parent of a minor child or children with whom the taxpayer does not reside;
- the taxpayer has an order that has been in effect for at least one-half of the tax year requiring him or her to make child support payments that are payable through a support collection unit; and
- the taxpayer is current on his or her child support for every order requiring him or her to make child support payments in the tax year for which the credit is sought.

The credit is equal to the greater of 20% of the amount of the federal earned income tax credit that would have been allowed to a parent with one qualifying child (determined from the column for single, head of household, or qualifying widow(er) in the federal EITC Table, even if the filing status is married filing joint return) or 2.5 times the amount of the federal earned income tax credit that would have been allowed to a taxpayer with no qualifying children.

A qualifying child is a child who meets the definition of this term under section 32(c)(3) of the Internal Revenue Code.

The Tax Department will receive verification from the Office of Temporary and Disability Assistance (OTDA) that the taxpayer is current on his or her child support obligations. A taxpayer who has been denied the credit has the right to request a review from the OTDA support collection unit through which the child support payments are made.

A taxpayer is not allowed multiple credits even if the taxpayer has more than one child or more than one support order. A taxpayer who meets the requirements for both the New York State earned income tax credit and the noncustodial parent New York State earned income tax credit (Tax Law, sections 606(d) and 606(d-1), respectively) may claim only one credit.

For further information regarding this credit, see Form IT-209, *Claim for Noncustodial Parent New York State Earned Income Credit*.

(Tax Law, section 606(d-1))

School Tax Relief (STAR) property tax rebate program and STAR tax credit

For tax years 2006 and after, there is a new program that provides certain homeowners with a school district tax rebate **or** a school district property tax (STAR) credit relating to their school district property taxes. For tax years when an appropriation to pay the rebates was included in the state budget, taxpayers may not claim the STAR tax credit. For tax years when an appropriation to pay the rebates is not included in the state budget, eligible taxpayers may claim the STAR tax credit. Since there was an appropriation to pay the rebate in 2006, no taxpayer may claim the STAR tax credit on a 2006 personal income tax return.

For 2006, rebates were issued to taxpayers who: (1) were eligible to receive the School Tax Relief (STAR) exemption on their 2006-2007 school tax bill, or (2) would have been eligible for a STAR exemption on the assessment roll for the 2006-2007 school tax year, but failed to apply by the earlier of the STAR exemption application deadline for their municipality or March 1, 2006, and filed a STAR rebate application with the Tax Department.

For additional information relating to the local property tax rebate program, see the STAR *Local Property Tax Rebate Program Frequently Asked Questions* page on the Tax Department Web site (www.nystax.gov).

(Real Property Tax Law, section 1306-b; Tax Law, section 606(n-1))

Real property tax credit

The definition of *qualifying real property taxes* (as defined in 606(e) of the Tax Law) was amended to exclude the school district property tax (STAR) credit amount, if any, provided in section 606(n-1) of the Tax Law.

This provision applies to tax years beginning on or after January 1, 2006.

(Tax Law, section 606(e))

New York City school tax credit

Section 1310(e) of the Tax Law, relating to the state school tax reduction credit, which is part of the School Tax Relief (STAR) program, was amended to increase the refundable tax credit allowed to New York City residents as follows:

- The credit for married taxpayers filing joint returns and surviving spouses has increased from \$125 to \$230.
- The credit for an unmarried taxpayer, a head of a household, or a married taxpayer filing a separate return has increased from \$62.50 to \$115.

The credit is required to be prorated if the taxpayer changes resident status during the year.

This provision applies to tax years beginning on or after January 1, 2006.

(Tax Law, section 1310(e))

Alternative fuels credit

Section 606(p) of the Tax Law was amended to provide an alternative fuels credit for alternative fuel vehicle refueling property. Prior law provided a broader alternative fuels credit, which terminated for tax years beginning after December 31, 2004.

Taxpayers will be allowed a credit for alternative fuel vehicle refueling property placed in service during the tax year. The credit is equal to 50% of the cost of new alternative fuel vehicle refueling property located in New York State, used in a trade or business, and for which a credit is allowed under section 30C of the Internal Revenue Code.

Alternative fuel vehicle refueling property means property that is qualified within the meaning of section 30C of the Internal Revenue Code, but does not include alternative fuel vehicle refueling property relating to a qualified hybrid vehicle.

This credit is not refundable, but any excess can be carried over to the following year or years. In addition, recapture of the credit may be required if the property ceases to qualify.

The credit applies to tax years beginning on or after January 1, 2006, but terminates for tax years beginning after December 31, 2010.

(Tax Law, section 606(p))

Home heating system credit and clean heating fuel credit

New sections 606(ll) and 606(mm) were added to the Tax Law to provide for the home heating system credit and the clean heating fuel credit, respectively.

The home heating system credit is a refundable tax credit for costs directly associated with the replacement of an existing home heating system in the taxpayer's principal residence located in New York State with a heating system which meets national Energy Star requirements. The credit is equal to 50% of such costs but cannot exceed \$500. The replacement system installation must be completed by December 31, 2007; however, the credit is based only on the costs incurred on or after July 1, 2006, and before July 1, 2007.

The clean heating fuel credit is a refundable tax credit for bioheat purchased for space heating or hot water production for residential purposes within New York State.

Bioheat is a fuel comprised of biodiesel blended with conventional home heating oil, which meets the specifications of the American Society of Testing and Materials (ASTM) designation D 396 or D 975.

Biodiesel is a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100 (pure biodiesel), which meets the specifications of ASTM designation D 6751.

The credit is based on the portion of the bioheat that is comprised of biodiesel and is calculated as \$.01 per gallon for each percent of biodiesel included in the bioheat, not to exceed \$.20 per gallon.

These provisions apply to tax years beginning in 2006 and 2007 for bioheat purchased on or after July 1, 2006, and before July 1, 2007.

For further information regarding these credits, see TSB-M-06(4)C, (6)I, *Home Heating System Credit and the Clean Heating Fuel Credit*.

(Tax Law, sections 606(l) and 606(m))

Living organ donors' subtraction modification

Section 612 of the Tax Law was amended to provide a subtraction modification for full-year New York State resident taxpayers who, while living, donate one or more human organs to another human being for human organ transplantation.

Human organ means all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow.

The New York State subtraction modification is limited to the lesser of:

- the amount of unreimbursed expenses incurred by the taxpayer for travel, lodging, and lost wages relating to the taxpayer's organ donation, or
- \$10,000.

A taxpayer may claim this subtraction modification only once in a lifetime, and it must be in the tax year in which the transplant occurs.

This provision applies to tax years beginning on or after January 1, 2007.

(Tax Law, section 612(c)(38))

Solar energy system equipment credit

Section 606 (g-1) of the Tax Law was amended to make a technical correction to the solar energy system equipment credit. In 2005, the credit was expanded to include components that utilized solar radiation to produce heating, cooling, and/or hot water. This amendment

changes the terminology in the definition of *qualified expenditures* to solar energy system equipment to conform to the title of the credit.

This provision applies to tax years beginning on or after January 1, 2006.

(Tax Law, section 606(g-1))

Handicapped-accessible taxicabs and livery service vehicles credit

A new section 606(o) was added to the Tax Law to provide a tax credit to taxpayers who provide a *taxicab* (as defined in section 148-A of the Vehicle and Traffic Law) or *livery* (as defined in section 121-E of the Vehicle and Traffic Law) service in New York State. The credit is equal to the incremental costs associated with the purchase of a handicapped-accessible vehicle or the conversion of a motor vehicle to a handicapped-accessible vehicle that is used in providing the taxicab or livery service. The credit may only be claimed once per vehicle and may not exceed \$10,000 for each vehicle.

The credit is not refundable, but any excess can be carried over to the following year or years.

For more information regarding this credit, see TSB-M-06(8)C, (10)I, *Credit for Handicapped-Accessible Taxicabs and Livery Service Vehicles (Articles 9-A and 22)*, and Form IT-239, *Claim for Handicapped-Accessible Taxicabs and Livery Service Vehicles Credit*.

This provision is effective January 1, 2006, through December 31, 2008, and applies to incremental costs incurred on or after January 1, 2006, but before January 1, 2009.

(Tax Law, section 606(o)) [Note: There are two versions of section 606(o).]

Rehabilitation of historic properties credit

A new section 606(o) was added to the Tax Law to provide a credit for the rehabilitation of historic properties.

The credit is for expenses related to the rehabilitation of a certified historic structure located in New York State in an amount equal to 30% of the credit amount allowed to a taxpayer under section 47(c)(3) of the Internal Revenue Code for the same structure for the same tax year, not to exceed \$100,000. The credit is not refundable, but any excess can be carried over to the following year or years. If the corresponding federal credit is recaptured by the taxpayer, a New York credit recapture is also required.

A *certified historic structure*, for purposes of this credit, is a structure which meets the definition of a certified historic structure under section 47(c)(3) of the Internal Revenue Code. Under that section, a certified historic structure is a building (and its structural components) that

is listed in the National Register of Historic Places or is located in a registered historic district and certified to be of historic significance to the district.

This provision applies to tax years beginning on or after January 1, 2007.

(Tax Law, section 606(o)) [Note: There are two versions of section 606(o).]

Historic homeownership rehabilitation credit

A new section 606(pp) was added to the Tax Law to provide a historic homeownership rehabilitation credit.

The historic homeownership rehabilitation credit is a tax credit for the rehabilitation of historic homes. The credit is equal to 20% of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified historic home not to exceed \$25,000 for any particular residence of the taxpayer. If a taxpayer qualifies for the credit with respect to more than one residence in the same tax year, the total amount of the credit for that tax year cannot exceed \$25,000.

If the qualified rehabilitation expenditures are only for exterior work, the expenditures must be approved by a local landmark commission established pursuant to section 96-a or 119-dd of the General Municipal Law; or by the Office of Parks, Recreation and Historic Preservation. If the qualified rehabilitation expenditures are for both interior and exterior work, the expenditures must be approved by the Office of Parks, Recreation and Historic Preservation or by a local government certified pursuant to section 101(c)(1) of the National Historic Preservation Act.

The historic homeownership rehabilitation credit may be claimed in the tax year in which the final certification step of the three-step certification process is completed. The final certification is acceptable as proof that the expenditures related to such construction qualify as qualified rehabilitation expenditures. For purchased qualified historic homes, the taxpayer will be treated as having made the qualified rehabilitation expenditures made by the seller of the home on the date of purchase and may claim the credit in the tax year of the purchase.

The credit is not refundable, but any excess can be carried over to the following year or years. In the case of a husband and wife filing separately, the amount of the credit may be divided in any manner that they both elect.

A tax credit recapture is required if before the end of the two-year period beginning on the date of the final certification of the certified rehabilitation or, if applicable, the date of the purchase of the building, the taxpayer disposes of his or her interest in the building or the building ceases to be used as the taxpayer's residence.

A *certified historic structure*, for purposes of this credit, is any building (and its structural components) which is listed in the State or National Register of Historic Places, or is located in a state or national registered historic district and is certified as being of historic significance to the district.

A *certified rehabilitation* is any rehabilitation of a certified historic structure which has been approved and certified as being consistent with the standards established by the Commissioner of Parks, Recreation and Historic Preservation for rehabilitation by the Office of Parks, Recreation and Historic Preservation, a local government certified pursuant to section 101(c)(1) of the National Historic Preservation Act, or a local landmark commission established pursuant to section 96-a or 119-dd of the General Municipal Law. It requires: (1) an initial certification that the structure meets the definition of a certified historic structure, (2) a second certification to be issued prior to construction certifying that the proposed rehabilitation work is consistent with the standards established by the Commissioner of Parks, Recreation and Historic Preservation for rehabilitation, and (3) a final certification issued when construction is completed, certifying that the work was completed as proposed and that the costs are consistent with the work completed.

A *qualified rehabilitation expenditure* is any amount properly chargeable to a capital account (1) in connection with the certified rehabilitation of a qualified historic home, and (2) for which depreciation would be allowable under section 168 of the Internal Revenue Code if the qualified historic home were used in a trade or business. It does not include any cost of acquiring any building or interest therein, any expenditure attributable to the enlargement of an existing building or any expenditure made prior to January 1, 2007. Additionally, at least 5% of the total expenditures made in the rehabilitation process must be allocable to the exterior of the building to be considered a qualified rehabilitation expenditure; for buildings used only partially for residential purposes, a qualified rehabilitation expenditure includes only those expenditures allocable to the residential portion.

A *qualified historic home* is a certified historic structure located in New York State:

- which has been substantially rehabilitated (qualified rehabilitation expenditures of at least \$5,000),
- which, or any portion of which, is owned, in whole or part, by the taxpayer (including tenant-shareholders of a cooperative housing corporation),
- where the taxpayer resides during the tax year in which the taxpayer is allowed the credit, and
- which is a targeted area residence within the meaning of section 143(j) of the Internal Revenue Code located in an area of a city, town, or village whose governing body has identified by resolution that such area is an area in need of community renewal and, by local law, has adopted an historic preservation and community renewal program.

A *purchased qualified historic home* is any qualified historic home purchased by the taxpayer if:

- the taxpayer is the first purchaser of the home following the date of the final certification step,
- the taxpayer resides in the home during the tax year in which he or she is allowed the credit,
- no credit was allowed to the seller with regard to this rehabilitation, and
- the taxpayer is furnished with the necessary information (as determined by the Commissioner of Taxation and Finance) to determine the credit.

These provisions apply to tax years beginning on or after January 1, 2007.

(Tax Law, section 606(pp))