

Summary of Budget Bill Personal Income Tax Changes Enacted in 2008

This memorandum contains brief summaries of personal income tax changes that were enacted as part of the 2008-2009 New York State budget (Chapter 57 of the Laws of 2008).

The following legislative changes are summarized in this memo:

- Collections from overpayments for governmental education loans
- Middle Class STAR Rebate Program
- Middle Class STAR rebate offsets
- New York City school tax credit
- Filing fees for limited liability companies and limited liability partnerships
- Fees or charges imposed by the United States or other states for crediting tax overpayments against outstanding debts owed to New York State
- Voluntary Disclosure and Compliance Program
- Financial institution data-match system for state tax collection purposes
- Voluntary Compliance Initiative
- Extension of tax shelter reporting requirements
- Modification for the federal domestic production activities deduction
- Empire State film production credit
- Low-income housing credit
- Investment tax credit for the financial services industry
- Credit for taxicabs and livery service vehicles accessible to persons with disabilities
- Clean heating fuel credit

Collections from overpayments for governmental education loans

Section 171-d of the Tax Law has been amended to provide for the crediting of personal income tax overpayments against **any** defaulted governmental education loan. Previously, the law had provided for the crediting of personal income tax overpayments against defaulted guaranteed student loans only.

For purposes of section 171-d, *governmental education loan* means any education loan debt, including judgments, owed to the federal or New York State government that is being collected by the New York State Higher Education Services Corporation.

This provision took effect April 23, 2008.

(Tax Law sections 697(e)(3), 171-a(6-a) and 171-d)

Middle Class STAR Rebate Program

Section 1306-b(3)(b) of the Real Property Tax Law has been amended to delay for one year the increase in the amount of rebate allowed for school years beginning in 2008 and 2009. Therefore, the Middle Class STAR Rebate Program will be fully phased in for school year 2010-2011 instead of 2009-2010.

(Real Property Tax Law sections 1306-b(3)(b)(i), (ii), and (iii))

Middle Class STAR rebate offsets

Section 171-q has been added to the Tax Law to allow certain offsets against the basic Middle Class STAR rebate amount.

The Tax Department (the department) will apply all or part of a basic Middle Class STAR rebate against the amount owed by any taxpayer who is the property owner, if the taxpayer:

- owes a New York State tax liability or a New York City or Yonkers personal income tax liability;
- owes past-due support or a past-due legally enforceable debt to the Internal Revenue Service (IRS), a New York State agency, or to another state;
- has defaulted on an education loan debt (including judgments owed to the federal or New State government); or
- owes a New York City tax warrant judgment debt.

For purposes of section 171-q, *taxpayer* includes any property owner to whom the basic Middle Class STAR rebate has been issued, even if the property owner owns the real property with other persons.

A *New York State agency* includes any state department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other entity performing a governmental or proprietary function for the state or a social services district.

If the property is owned by more than one taxpayer (including married individuals), the property owner(s) who is not liable for the obligation or debt owed cannot file any statement or Form IT-280, *Nonobligated Spouse Allocation*, to disclaim the debt and have a portion of the basic Middle Class STAR rebate amount allocated to that property owner.

The department will give notice to any property owner whose basic Middle Class STAR rebate is being offset. The department will rebate any amount that exceeds the debt.

This provision applies to basic Middle Class STAR rebates issued for the 2008-09 school year and subsequent school years. This provision does not apply to recipients of the enhanced Middle Class STAR rebate.

(Tax Law section 171-q)

New York City school tax credit

Section 1310(e)(2) of the Tax Law and section 11-1706(c)(2) of the Administrative Code of the City of New York have been amended to delay the scheduled increases in the amount of New York City school tax credit allowed for tax years beginning in 2008 and after. In addition, the new law eliminates the credit for taxpayers with incomes of more than \$250,000.

- For married taxpayers filing joint returns and surviving spouses with incomes of \$250,000 or less, the amount of the New York City school tax credit is as follows:

For tax years beginning in:	The credit is:
2008	\$290
2009	\$310
after 2009	\$335

- For unmarried individuals, heads of household, or married taxpayers filing separate returns with income of \$250,000 or less, the amount of the New York City school tax credit is as follows:

For tax years beginning in:	The credit is:
2008	\$145
2009	\$155
after 2009	\$167.50

For each tax year beginning on or after January 1, 2010, the *more than \$250,000* income limitation will be adjusted for inflation.

For purposes of this credit, *income* means the taxpayer's federal adjusted gross income for the tax year reduced by the taxable amount of distributions from individual retirement accounts or individual retirement annuities.

(Tax Law section 1310(e) and section 11-1706(c)(2) of the Administrative Code of the City of New York)

Filing fees for limited liability companies and limited liability partnerships

Section 658(c)(3) of the Tax Law has been amended in relation to the filing fees for limited liability companies (LLCs) and limited liability partnerships (LLPs).

For tax years beginning after 2007, certain entities that have any income derived from New York sources are required to pay a filing fee. The filing fee is due within 30 days of the last day of the tax year. The entities affected by this requirement are:

- domestic and foreign LLCs that are treated as partnerships for federal income tax purposes;
- every LLC that is a disregarded entity for federal income tax purposes;
- LLPs subject to Article 8-B of the Partnership Law; and
- foreign LLPs.

In addition, for tax years beginning after 2007, the filing fee will be based on the New York source gross income of the LLC or LLP for the tax year immediately preceding the tax year for which the fee is due. Under previous law, the fee was based on the number of partners or members in the LLC or LLP. If the LLC or LLP does not have any New York source gross income for the tax year immediately preceding the tax year for which the fee is due, the LLC or LLP will pay the minimum filing fee of \$25.00. LLCs that are disregarded entities for federal income tax purposes will pay the minimum fee of \$25.00, regardless of income. Additionally, no income tax credits may be applied against the filing fee.

New York source gross income is the sum of the partner's or member's shares of federal gross income from the LLP or LLC derived from or connected with New York sources, determined in accordance with the provisions of section 631 of the Tax Law, as if those provisions and any related provisions expressly referred to a computation of federal gross income from New York sources. For purposes of this section, federal gross income is computed under section 61 of the Internal Revenue Code, but there will be no allowance or deduction for cost of goods sold.

The amount of the filing fee for tax years beginning after 2007 will be determined in accordance with the following table:

If the New York source gross income is:	The fee is:
not more than \$100,000	\$25
more than \$100,000 but not over \$250,000	\$50
more than \$250,000 but not over \$500,000	\$175
more than \$500,000 but not over \$1,000,000	\$500

more than \$1,000,000 but not over \$5,000,000	\$1,500
more than \$5,000,000 but not over \$25,000,000	\$3,000
more than \$25,000,000	\$4,500

New York City also has the authority to impose a filing fee on LLCs and LLPs. The filing fee would be similar to the state fee, except the amount of the fee would be based on New York City gross income. To date, the city has not acted to impose this fee.

(Tax Law section 658 and 1304-C)

Fees or charges imposed by the United States or other states for crediting tax overpayments against outstanding debts owed to New York State

Past due and legally enforceable New York State, New York City, or Yonkers personal income tax debts are referred to the U.S. Department of the Treasury Offset Program. Under this program, federal income tax refunds (overpayments), up to the amount of your debt, are sent to the Tax Department.

New section 171-p has been added to the Tax Law to provide that any fees or charges imposed by the United States or any state, for sending a taxpayer's overpayment to the department to satisfy the taxpayer's debt owed to New York State, will be added to the taxpayer's debt. That is, the fee or charge will be paid by the taxpayer. Prior to the new law, the department paid the fee or charge.

Taxpayer means any individual, corporation, partnership, limited liability partnership or company, partner, member, manager, estate, trust, fiduciary, or entity.

This provision took effect April 23, 2008.

(Tax Law section 171-p)

Voluntary Disclosure and Compliance Program

The Tax Law has been amended to add new Article 36, Compliance and Enforcement Initiatives. Section 1700 of Article 36 establishes the Voluntary Disclosure and Compliance Program to be administered by the department.

The Voluntary Disclosure and Compliance Program allows eligible taxpayers to voluntarily disclose and pay certain underreported tax liabilities and interest. By executing a compliance agreement with the department, taxpayers will avoid tax penalties as well as civil, administrative, and criminal actions by the department.

An *eligible taxpayer* is an individual or entity subject to any tax imposed by, or pursuant to the authority of the Tax Law or any other law imposing administrative tax responsibilities on the department, and who meets all of the following criteria:

- The taxpayer is not currently under audit by the department.
- The taxpayer is voluntarily disclosing a New York tax liability that the department has not determined, calculated, researched or identified at the time of the disclosure.
- The taxpayer is not currently a party to any criminal investigation being conducted by an agency of the state or any political subdivision thereof.
- The taxpayer is not seeking to disclose participation in a tax avoidance transaction that is a federal or New York State reportable or listed transaction.

The term *taxpayer* includes any person required to pay or collect any of the taxes covered by the program. A taxpayer can be an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person subject to tax.

An eligible tax for the program is any tax currently or previously imposed under the Tax Law or administered by the department. To be eligible the tax must not have been previously assessed.

This provision took affect April 23, 2008. For additional information on this program, visit the Tax Department Web site (www.nystax.gov).

(Tax Law section 1700)

Financial institution data-match system for state tax collection purposes

The Tax Law has been amended to add new Article 36, Compliance and Enforcement Initiatives. Section 1701 of Article 36 requires the department to develop and operate a financial institution data-match system for state tax collection purposes. This system will assist the department in the collection of tax debts.

Each financial institution doing business in New York State must, in conjunction with the department or the department's authorized designee (the designee), develop and operate a data-match system to facilitate the identification and seizure of non-exempt financial assets of tax debtors identified by the department or the designee. If a financial institution has a data-match system developed or used to administer the child support enforcement programs of this state that is approved by the department or the designee, the financial institution may use that system to comply with the provisions of section 1701 of the Tax Law.

Each financial institution will be required to provide identifying information each calendar quarter to the department for each tax debtor identified by the department if the tax debtor maintains an account at the institution. The identifying information must include the tax debtor's name, address, and social security number or other taxpayer identification number, and all account numbers and balances in each account. The financial institution will not be liable under state law to any person for the disclosure of this information to the department or designee, or for any other action taken in good faith to comply with section 1701 of the Tax Law.

Both the financial institution and the designee are prohibited from disclosing to the tax debtor that the name of the tax debtor has been received from or furnished to the department, unless the department authorizes them in writing to do so. However, a financial institution may disclose to its depositors or account holders that the department has the authority to request certain identifying information on certain depositors or account holders under the financial institution data-match system.

A violation of the disclosure policy will result in the imposition of a civil penalty equal to the greater of one thousand dollars (\$1,000) or the amount in the account of the person to whom the disclosure was made, for each instance of unauthorized disclosure by the financial institution. This civil penalty can be assessed and collected as if the penalty were tax.

For purposes of this new provision:

Debt means all liabilities, including unpaid tax, interest, and penalty, that the department is required by law to collect and that have been reduced to judgment by the docketing of a New York State tax warrant in the office of a county clerk located in New York State or by the filing of a copy of the warrant in the office of the Department of State.

Tax debtor means a natural person or any entity other than a natural person named on a New York State tax warrant and identified thereon as a judgment debtor.

Financial institution means any financial institution authorized or required to participate in a financial institution data-match system or program for child support enforcement purposes under federal or state law.

(Tax Law section 1701)

Voluntary Compliance Initiative

The Tax Law has been amended to reopen the Voluntary Compliance Initiative (VCI) that was established by Ch. 61 of the Laws of 2005, Part N, section 11. The VCI allows taxpayers to report and pay underreported tax liabilities and interest attributable to abusive tax avoidance transactions. This voluntary compliance program applies to tax liabilities under Articles 9, 9-A, 22, 30, 32, or 33 of the Tax Law attributable to the use of tax avoidance transactions for tax years beginning before January 1, 2005.

Taxpayers participating in this initiative will have the option to participate with a waiver of the right to appeal their liability for any taxes paid under the program, or to participate with the right to appeal.

- If a taxpayer forgoes the right to appeal, all applicable penalties are waived, except that only 50 percent of the penalty for failure to participate in the first VCI program will be waived in the case of disclosure of a listed or reportable transaction.
- If the taxpayer participates with appeal rights, all applicable penalties are waived except the negligence and substantial understatement penalties as they were in effect on December 31, 2004. In the case of disclosure of a listed or reportable transaction, only 50 percent of the penalty for failure to participate in the first VCI will be waived.

Under the original VCI legislation, an eligible taxpayer who was entitled to participate in the VCI but did not participate, could be assessed a failure to participate penalty of 100 percent of the interest due on any deficiency attributable to a tax avoidance transaction. However, as described above, if an eligible taxpayer elects to participate in the reopened VCI program and complies with the requirements for participation, 50 percent of this penalty will be waived in the case of disclosure of a listed or reportable transaction and 100 percent in the case of all other tax avoidance transactions.

The reopened VCI begins November 1, 2008, and ends January 31, 2009. More details on the VCI will be announced by the department in the future.

(Ch. 61 of the Laws of 2005, Part N, section 11)

Extension of tax shelter reporting requirements

Chapter 57 of the Laws of 2008 amended Part I of Chapter 60 of the Laws of 2007. The amendment extends the expiration date of the reporting requirements and related administrative provisions concerning the disclosure of certain federal and New York State reportable transactions, and related information regarding tax shelters, to July 1, 2011. The provisions were due to expire on July 1, 2009.

For more information regarding the reporting requirements and related administrative provisions concerning the disclosure of certain transactions and related information, see the following documents that are available on the Tax Department Web site (www.nystax.gov):

- TSB-M-05(2)C,(4)I, *Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*
- TSB-M-05(2.1)C,(4.1)I, *Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*

- TSB-M-05(2.2)C,(4.2)I, *Additional Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*
- TSB-M-07(4)C,(4)I, *Amendments to the Procedural Regulations Relating to New York Reportable Transactions*
- TSB-M-07(5)C,(5)I, *Notification of New York Listed Transaction - Certain Charitable Contribution Deductions*
- TSB-M-07(7)C, (6)I, *Extension of Tax Shelter Provisions*

(Tax Law sections 25, 683(c)(11), 685, 1083(c)(11), and 1085, and Department Regulations Part 2500 (20NYCRR Part 2500))

Modification for the federal domestic production activities deduction

For tax years beginning on or after January 1, 2008, the federal domestic production activities deduction allowed under section 199 of the Internal Revenue Code will not be allowed for New York State personal income tax purposes. In computing New York adjusted gross income, taxpayers must make an addition modification to federal adjusted gross income for the amount of the domestic production activities deduction allowed for federal income tax purposes.

(Tax Law sections 612(b) and 618)

Empire State film production credit

For tax years beginning on or after January 1, 2008, the Empire State film production credit has been increased from 10% to 30% of the qualified production costs paid or incurred in the production of certain qualified films and television shows. Also, if the amount of the credit allowed exceeds the taxpayer's tax, the entire excess is treated as an overpayment to be credited or refunded (without interest) in the tax year the credit is claimed. Previously, only 50% of the excess credit was treated as an overpayment to be credited or refunded for the tax year the credit was claimed.

The Empire State film production credit has been extended to include tax years ending on or before December 31, 2013. In addition, the statewide aggregate dollar amount of Empire State film production credit that may be allowed has been increased to \$65 million for tax year 2008, \$75 million for tax year 2009, \$85 million for tax year 2010, \$90 million for tax years 2011 and 2012, and \$110 million for tax year 2013.

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))

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 has been 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 \$16 million to \$20 million.

(Public Housing Law section 22(4) and Tax Law sections 18 and 606(x))

Investment tax credit for the financial services industry

The Tax Law has been amended to extend the availability of the investment tax credit (ITC) for the financial services industry, to property placed in service before October 1, 2011. Before the amendment, the credit was only available for property placed in service before October 1, 2008.

(Tax Law sections 606(a) and 606(i))

Credit for taxicabs and livery service vehicles accessible to persons with disabilities

The credit for taxicabs and livery service vehicles accessible to persons with disabilities has been extended. The credit is allowed for the incremental cost associated with the purchase of taxicabs and livery service vehicles accessible to persons with disabilities or the conversion of a motor vehicle to a taxicab or livery service vehicle accessible to persons with disabilities. The incremental costs must be incurred on or after January 1, 2006, and before January 1, 2011. Under previous law, the credit applied to incremental costs incurred on or after January 1, 2006, and before January 1, 2009.

(Tax Law sections 606(i) and 606(oo))

Clean heating fuel credit

The clean heating fuel credit has been reinstated to include purchases of bioheat on or after January 1, 2008, and before January 1, 2012. Under previous law, the credit applied to bioheat purchased on or after July 1, 2006 and before July 1, 2007. Accordingly, no credit is

available for bioheat purchased on or after July 1, 2007, and before January 1, 2008. The credit is available for tax years beginning after December 31, 2005 and before January 1, 2012.

The credit is available for New York State Article 22 personal income tax taxpayers and Article 9-A corporation franchise tax taxpayers. The credit is allowed for the tax year in which the bioheat is purchased. The bioheat must be used for space heating or hot water production for residential purposes within New York State. For more information, see TSB-M-08 (5)C, (1)I, *Clean Heating Fuel Credit*.

(Tax Law sections 210(39) and 606(mm))

NOTE: A TSB-M is an informational statement of existing Department policies or of changes to the law, regulations, or Department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information presented in a TSB-M.