

Supplemental Summary of Personal Income Tax Legislative Changes Enacted in 2009

This TSB-M is a summary of personal income tax legislation signed into law in 2009 that was not addressed in TSB-M-09(11)I, *Summary of Budget Bill Personal Income Tax Changes Enacted in 2009*.

The following legislative changes are summarized in this memo:

- Empire State commercial production credit
- Gift for the Volunteer Firefighter and Voluntary Emergency Services Workers Recruitment and Retention Fund
- Historic homeownership rehabilitation credit
- Penalty and Interest Discount Program (PAID)
- Rehabilitation of historic properties credit
- Tax Preparer Registration Program
- Yonkers resident income tax surcharge and nonresident earnings tax

Empire State commercial production credit

Chapter 448 of the Laws of 2009 amended section 28 of the Tax Law to provide clarification of the time period that is used to measure production for purposes of calculating the Empire State commercial production “growth” credit allowed under Tax Law section 28(a)(2)(i) when a commercial production company has not been in business for three years and does not have a full three years of prior expenses. The amendments provide that until a qualified production company has established a three-year history, the credit will be based on either its previous year or its average of the two previous years, whichever period is longer. The tax credit will be applied only to the amount of the total qualified production costs of the current calendar year that are greater than the total amount of production costs of the appropriate measurement period.

Chapter 448 also amended the definition of production costs. Under the new law, costs incurred in the production of a commercial where the commercial consists entirely of techniques such as visual effects, graphic design, or animation, when occurring in New York, are deemed to be qualified production costs for purposes of the credit.

These amendments are effective as of September 16, 2009.

(Tax Law sections 28(a)(2)(i) and 28(b)(2))

Gift for the Volunteer Firefighter and Voluntary Emergency Services Workers Recruitment and Retention Fund

Chapter 490 of the Laws of 2009 added section 630-b to the Tax Law. For tax years beginning on or after January 1, 2010, the new section allows personal income tax return filers to make a gift to the Volunteer Firefighter and Volunteer Emergency Services Workers Recruitment and Retention Fund. The gift can be made on the filer's personal income tax return in any whole dollar amount. Any amount contributed will reduce the taxpayer's overpayment or increase the amount the taxpayer must pay.

(Tax Law section 630-b)

Historic homeownership rehabilitation credit

Chapter 239 of the Laws of 2009 amended the credit for the historic homeownership rehabilitation credit by increasing the maximum allowed credit from \$25,000 to \$50,000 per taxpayer per year (\$100,000 for married taxpayers filing a joint return). However, if a taxpayer incurs qualified rehabilitation expenditures in relation to more than one residence in the same tax year, the total amount of credit claimed by a taxpayer cannot exceed \$25,000 per year (\$50,000 for married taxpayers filing a joint return).

The amendments also provide that if the amount of the credit exceeds the taxpayer's tax for the year, and the taxpayer's New York adjusted gross income for the year does not exceed \$60,000, the excess may be treated as an overpayment of tax to be credited or refunded. No interest will be paid on the refund. If the taxpayer's New York adjusted gross income for the year exceeds \$60,000, the excess credit may be carried over and applied against the tax for the following year or years.

The amendments also expand the definition of eligible properties to include those located within a census tract that is at or below 100% of the state median family income in the most recent federal census.

These amendments apply to taxable years beginning on or after January 1, 2010. They will expire and be deemed repealed December 31, 2014. However, the credit will apply to any rehabilitation project commenced on or before December 31, 2014.

Additional information on the credit will be provided by the Tax Department in a future document.

(Tax Law section 606(pp))

Penalty and Interest Discount Program (PAID)

Chapter 501 of the Laws of 2009 established the Penalty and Interest Discount (PAID) Program. The program's intent is to encourage eligible taxpayers to pay off their eligible tax liabilities for which an assessment or final determination was issued on or before December 31, 2006. A taxpayer who participates in the program will receive a reduction in the accrued interest and penalty currently owed on eligible tax liabilities. The program period began on January 15, 2010, and will end on March 15, 2010.

For a complete description of this program, see TSB-M-09(13)C, (14)I, (12)M, (10)R, (20)S, and visit our Web site at www.nys.tax.gov.

Rehabilitation of historic properties credit

Chapter 239 of the Laws of 2009 amended the credit for the rehabilitation of historic properties in the personal income tax by increasing the credit from 30% to 100% of the amount of the federal historic properties credit claimed by the taxpayer. The credit was also amended to increase the maximum credit allowed from \$100,000 to \$5 million.

In addition, the availability of the credit under Article 22 is limited to projects that are in an area that is in whole or in part:

- a targeted area residence within the meaning of IRC section 143(j), which is a residence in an area which is either a qualified census tract or an area of chronic economic distress, or
- located within a census tract which is identified as being at or below 100% of the state median family income in the most recent federal census.

These amendments apply to taxable years beginning on or after January 1, 2010. They will expire and be deemed repealed December 31, 2014. However, the credit will apply to any rehabilitation project commenced on or before December 31, 2014.

Additional information on the credit will be provided by the Tax Department in a future document.

(Tax Law section 606(oo))

Tax Preparer Registration Program

Chapter 503 of the Laws of 2009 amended the definition of *tax return preparer* in section 32 of the Tax Law. The definition is used to determine who needs to register for the Tax Preparer Registration Program for personal income tax returns prepared on or after

December 31, 2009, and for returns prepared for taxes other than personal income taxes on or after December 31, 2010.

Prior to the amendment, attorneys, public accountants, and certified public accountants were excluded from the definition of tax return preparer only if they were registered or licensed in New York State. After the amendment, attorneys, public accountants, and certified public accountants who are registered or licensed in any state in the United States are excluded from the definition.

In addition, the exclusion for employees preparing returns under the supervision of attorneys, public accountants, and certified public accountants was amended. Under the new law, to be excluded from the definition of tax return preparer, the individual has to be an employee of a law firm, public accounting firm, or certified public accounting firm and be preparing returns under the supervision of an attorney, a public accountant, or a certified public accountant in that firm. Prior to the amendment, the employer was not required to be a law firm, public accounting firm, or certified public accounting firm for the employee to qualify for exclusion.

For more information on this amendment, see TSB-M-09(14)C, (16)I, (13)M, (5)MCTMT, (11)R, (21)S, *Amendment to the Definition of Tax Return Preparer for the Tax Preparer Registration Program*. For a complete description of the program see TSB-M-09(11)C, (9)I, 10(M), (3)MCTMT, (4)R, (15)S, *Tax Preparer Registration Program*.

(Tax Law section 32(a)(14))

Yonkers resident income tax surcharge and nonresident earnings tax

Chapter 141 of the Laws of 2009 extended the Yonkers resident income tax surcharge and the Yonkers nonresident earnings tax through tax years ending on or before December 31, 2011. Under previous law, these taxes would have expired for tax years beginning after 2009.

The Yonkers resident income tax surcharge rate is currently 10% of the net New York State tax. The city of Yonkers nonresident earnings tax on the wages earned and net earnings from self employment of nonresident individuals, estates, and trusts is currently imposed at the rate of 0.5%.

(Tax Law, sections 1321 and 1340; Codes and Ordinances of the City of Yonkers, 15-100 and 15-117)

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.