

Amendments Affecting New York Itemized Deductions

Chapter 57 of the Laws of 2010 amended sections 615 of the Tax Law and 11-1715 of the Administrative Code of the City of New York with regard to the New York itemized deduction.

Modification to itemized deductions for state and local sales tax

Sections 615(c)(1) of the Tax Law and 11-1715(c)(1) of the Administrative Code of the City of New York have been amended with regard to the federal itemized deduction allowed for state and local sales tax. Effective for tax years beginning on or after January 1, 2010, New York will no longer allow the federal deduction for state and local sales tax in the computation of an individual's New York itemized deduction¹.

Limitation for individuals whose New York adjusted gross income exceeds ten million dollars

Chapter 57 added new section 615(g) to the Tax Law and new section 11-1715(g) to the Administrative Code of the City of New York. Effective for tax years 2010, 2011, and 2012, these new sections limit the amount of the New York itemized deduction allowed for an individual whose New York adjusted gross income exceeds \$10 million to 25% of the individual's federal itemized deduction for charitable contributions. No other federal itemized deductions of the individual will be allowed for New York purposes. Previously, these individuals' New York itemized deductions were limited to 50% of their federal itemized deduction for charitable contributions.

The amount of New York itemized deductions allowed for taxpayers with New York adjusted gross income of \$10 million or less was not changed by these amendments.

Penalty for underpayment of estimated tax revised

Sections 685(c)(3)(B)(ii) of the Tax Law and 11-1785(c)(3)(B)(ii) of the Administrative Code of the City of New York, relating to estimated income tax penalties, have been amended. These amendments revise the rules relating to the penalty for underpayment of estimated tax for tax year 2010 to take into account the new limit on the New York State itemized deduction for an individual whose New York adjusted gross income exceeds \$10 million.

To avoid the penalty for underpayment of estimated tax for tax year 2010, the total amount of estimated tax and withholding tax paid must be:

¹ Note: Under current law, the federal sales tax deduction expired for tax years beginning after 2009. At the time this memorandum was issued, Congress had not passed legislation to extend the federal sales tax deduction to tax years beginning in 2010.

- at least 90% (66 2/3% for farmers and fishermen) of the amount of income tax due as shown on the taxpayer's return for 2010; **or**
- 100% of the tax shown on the taxpayer's return for 2009 (110% of that amount if he or she is not a farmer or a fisherman and his or her New York adjusted gross income shown on that return is more than \$150,000 or, if married filing separately for 2010, more than \$75,000). To qualify for this provision, the taxpayer must have filed a return for 2009, and it must have been for a full 12-month year.

In determining whether a taxpayer paid 100% (or 110%, if applicable) of the tax shown on the 2009 return, the taxpayer must recompute his or her 2009 tax as if the new limit on itemized deductions for tax years 2010, 2011, and 2012, was in effect for tax year 2009.

No penalty will apply to any shortfall in a taxpayer's April 15, 2010, or June 15, 2010, estimated tax payment that is attributable to this amendment, provided the taxpayer includes any shortfall in his or her September 15, 2010, payment.

Special rule for New York City

The new law contains provisions that allow New York City to elect not to have the state itemized deduction limitation apply when computing the New York City resident tax. At the time this memorandum was issued, the city had not made the election. If the city makes the election, additional guidance will be issued.

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