



## **Supplemental Summary of Personal Income Tax Legislative Changes Enacted in 2011**

This memorandum contains a summary of the following personal income tax legislation signed into law in 2011:

- [The Marriage Equality Act](#)
- [Reversing of personal income tax overpayments previously credited to estimated tax accounts](#)
- [Taxpayer Refund Choice Act](#)
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### **The Marriage Equality Act**

The Marriage Equality Act (Act) was signed into law as Chapters 95 and 96 of the Laws of 2011 on June 24, 2011. One purpose of the Act is to provide that all marriages, whether of same-sex couples or different-sex couples, will be treated equally under all laws of the state. Accordingly, the Act applies to all taxes administered by the Tax Department as of the effective date. For more information, see the department Web site ([www.tax.ny.gov](http://www.tax.ny.gov)).

### **Reversing of personal income tax overpayments previously credited to estimated tax accounts**

Chapter 521 of the Laws of 2011 amended the Tax Law relating to the reversing of certain overpayments of personal income tax that were previously credited against a taxpayer's estimated tax. The amendments to the Tax Law give the commissioner the authority to reverse overpayments of tax from a preceding tax year that have been credited against a taxpayer's estimated tax for the succeeding tax year if:

- the taxpayer makes a claim for refund or credit of the overpayment on or before the due date, including extensions, of the taxpayer's income tax return for the succeeding tax year; and
- good cause is shown for the reversal of the overpayment.

The decision of the commissioner to grant or deny a taxpayer's request is final and not subject to further administrative or judicial review.

If the commissioner grants the taxpayer's request, the overpayment may be credited against a liability or refunded without interest. Additionally, the taxpayer will not be relieved of any penalty imposed for underpayment of estimated tax due for the succeeding tax year as a result of the reversal of the overpayment.

These provisions took effect September 23, 2011.

(Tax Law sections 686(e), 687(k), and sections 11-1786(e) and 11-1787(k) of the Administrative Code of the City of New York)

### **Taxpayer Refund Choice Act**

Chapter 479 of the Laws of 2011 added new section 3013 to the Tax Law. This section provides that all personal income tax taxpayers have the right to:

- receive personal income tax refunds by paper check, and
- opt out of any prepaid debit card or direct deposit program for payment of personal income tax refunds.

Additionally, this new section requires the department to provide taxpayers with a clear written statement about these rights.

If the commissioner elects to implement a program that allows the department to pay personal income tax refunds by prepaid debit cards or by direct deposit, the department's forms must also allow the taxpayer the option to receive a paper check. The paper check option (check box) must appear in the area designated for the selection of options for receiving a personal income tax refund. In addition, in any written notice the department issues about a prepaid debit card program for the payment of tax refunds, the department must describe to taxpayers all of the features of the debit card program, including any fees that may be charged to the taxpayer when using the debit card.

This provision takes effect November 15, 2011, and will expire November 15, 2016.

(Tax Law section 3013)

### **New York City resident tax rates**

Chapter 209 of the Laws of 2011 extends the New York City resident tax rates imposed under section 11-1701 of the Administrative Code of the City of New York (the Code) and the 2.85% minimum income tax imposed under section 11-1702 of the Code to tax years beginning before 2015. Also, the 14% additional tax imposed under section 11-1704.1 of the Code has been extended to tax years beginning before 2015. Prior to this extension, the rates were set to expire after 2011.

(Tax Law sections 1301, 1301-A, 1304, 1304-B; Administrative Code of the City of New York sections 11-1701, 11-1702, 11-1704.1)

### **Yonkers resident income tax surcharge and nonresident earnings tax**

Chapter 255 of the Laws of 2011 and Yonkers Local Law 9-2011 extended the Yonkers resident income tax surcharge and the Yonkers nonresident earnings tax through tax years ending before 2014. Under previous law, these taxes would have expired for tax years beginning after 2012. The Yonkers resident income tax surcharge rate is currently 15% 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; Code of the City of Yonkers sections 15-100 and 15-116)

### **Clean heating fuel tax credit**

Chapter 591 of the Laws of 2011 amended section 210(39) of the Tax Law relating to the clean heating fuel tax credit for business corporations that are taxable under Article 9-A of the Tax Law. The amendment extends the availability of the tax credit to bioheat purchased on or after January 1, 2008, and before January 1, 2017. Previously the credit for business corporations was allowed for bioheat purchased on or after January 1, 2008, and before January 1, 2012.

Section 606(mm) of the Tax Law provides for the clean heating fuel tax credit for taxpayers subject to tax under Article 22 of the Tax Law (Personal Income Tax). However, due to a technical oversight, section 606(mm) of the Tax Law was not amended by Chapter 591 of the Laws of 2011. Therefore, for personal income tax filers, the clean heating fuel tax credit was not extended. However, the Governor's Approval Memorandum (Number 11, Chapter 591), states that both houses of the legislature have agreed to pass legislation to also extend the credit allowed under section 606(mm) to bioheat purchased on or after January 1, 2008, and before January 1, 2017. Additional information will be posted to our Web site as it becomes available.

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

### **Police and fire retirement system provisions**

Chapter 525 of the Laws of 2011 added new section 1204-a to the Retirement and Social Security Law with regard to police officers and firefighters (members) who first join the New York State and Local Police and Fire Retirement Systems on or after January 1, 2010. Chapter 525 of the Laws of 2011 also amended sections 612, 671, and 1340 of the Tax Law.

Under new section 1204-a, a participating employer, for federal income tax purposes, will pick up its members' contributions required to be made under section 1204 of the Retirement and Social Security Law by reducing the salary of its members by the amount that each member is required to contribute. The contributions that are picked up by the employer will be treated as

employer contributions for federal income tax purposes under Internal Revenue Code (IRC) sections 414(h) and 403(b). Accordingly, these contributions will not be subject to federal income tax at the time the contributions are made.

However, for New York personal income tax purposes, 414(h) and 403(b) contributions are still considered employee wages. Accordingly, the amount of these contributions is subject to withholding of New York State, and if applicable, New York City and Yonkers income taxes. In addition, when filing a New York State personal income tax return, members must include 414(h) and 403(b) contribution amounts in the computation of their New York adjusted gross income by making an addition modification on their New York State tax return. Furthermore, the contributions must be added to wages in the computation of a member's Yonkers nonresident earnings tax, if applicable.

These provisions will take effect at the beginning of the first payroll period following sixty days after the retirement system receives a favorable ruling from the Internal Revenue Service stating that the employee contributions covered by this new law are not subject to federal income tax until distributed or made available to the employee.

(Retirement and Social Security Law section 1204-a and Tax Law sections 612, 671, and 1340)

### **Double jeopardy exception**

Chapter 186 of the Laws of 2011 amended the Criminal Procedure Law to create an exception from the existing double jeopardy provisions that prevent a person from being separately prosecuted for two offenses based upon the same act or criminal transaction. Under the new law, a person can be prosecuted for New York State and New York City income tax crimes even though the defendant was previously prosecuted in federal court for federal income tax purposes based on the same act or criminal transaction.

This provision takes effect on October 18, 2011, and applies to offenses committed on or after that date.

(Criminal Procedure Law section 40.20(2)(i))

### **Changes to the Offer In Compromise Program**

Chapter 469 of the Laws of 2011 amended subdivisions Fifteenth and Eighteenth-a of section 171 of the Tax Law relating to the Tax Department's Offer in Compromise Program. The amended sections expand the eligibility of taxpayers to participate in the Tax Department's Offer in Compromise Program. For more information, see [TSB-M-11\(9\)I](#), *Changes to the Offer In Compromise Program*, and the department Web site ([www.tax.ny.gov](http://www.tax.ny.gov)).

These provisions took effect August 17, 2011.

(Tax Law sections 171(Fifteenth) and 171(Eighteenth-a))

## **20-year statute of limitations to collect tax liabilities**

Chapter 432 of the Laws of 2011 added new section 174-b to the Tax Law. The new section was added to revise the 20-year statute of limitations on the department's time to collect tax liabilities that have been assessed and for which a notice and demand has been issued. Section 174-b provides that a tax liability will not be enforceable and will be extinguished after 20 years from the first date a warrant could be filed by the department, regardless as to whether a warrant was actually filed. This statute of limitations is applicable to all taxes, and any special assessments, fees, interest, additions to tax, penalties, or other impositions administered by the department.

This new law is effective August 17, 2011, and applies to tax liabilities that could have been warranted before August 17, 2011, as well as tax liabilities that can first be warranted on or after that date. Therefore, the 20-year time limit starts from the first date a warrant could be filed for a tax liability, regardless of when the tax liability was assessed (i.e., before or after the effective date). For more information, see [TSB-M-11\(10\)I](#), *20-Year Statute of Limitations to Collect Tax Liabilities*.

(Tax Law section 174-b)

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.