

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-M-78-(16)-I (Rev)
Income Tax
May 15, 1980

This memorandum supersedes memorandum numbered TSB-M-78-(16)-I (REV) dated August 6, 1979, which should be destroyed.

Renters Interest In and Personal Liability for

Real Property Tax

Chapter 471 of the Laws of 1978 has amended the Real Property Tax Law and the New York State Personal Income Tax Law effective April 1, 1979. This provides that certain renters of residential property have an interest in that real property and are personally liable for the real property taxes. This would result in part of the rent paid being considered real property taxes and qualifying for an itemized deduction for Federal income tax purposes (subject to Internal Revenue Service approval). The amendment to the Tax Law provides for a modification, subtracting from Federal itemized deductions that amount which was deducted by a renter for real property taxes.

Residential renters who pay more than \$150 per month and who rent pursuant to a lease or for at least twelve consecutive months or who rent a unit subject to the regulation and control of residential rents are considered to have an interest in the real property. Also, renters who meet these qualifications but pay less than \$150 per month rent may elect to have an interest in the real property by filing a written statement with their landlord and the assessing body of the municipality.

Section 615(c)(5) is added to the tax law to provide for the modification reducing federal itemized deductions by the amount of the federal itemized deduction taken by a renter for real property taxes.

CHAPTER 83 OF THE LAWS OF 1980 AMENDED THE EFFECTIVE DATE TO READ APRIL 1, 1982. THIS POSTPONES FOR TWO YEARS THE PROVISIONS OF THIS LAW AS OUTLINED ABOVE.

The Internal Revenue Service on June 4, 1979 held that the tax paid by renters pursuant to section 304 and 926-A of the New York Real Property Tax Law is not a tax on the renter for Federal income tax purposes, but rather is part of the renters' rental payments. Therefore, it would not qualify as a real property tax deduction under section 164(a)(1) of the Internal Revenue Code by the renter. The New York State Department of Taxation and Finance asked for a postponement in the decision until the State had an opportunity to meet any objections raised by the federal agency.