



## Department of Taxation and Finance

### **Important:**

The New York State and New York City minimum income taxes were repealed, effective for tax years beginning on or after January 1, 2014.

As a result, this TSB-M is obsolete and cannot be relied upon for tax years on or after that date insofar as the TSB-M addresses matters relating to the minimum income tax.

[See, Part J of Chapter 59 of the Laws of 2014]

The TSB-M begins on page 2 below.

1981 LEGISLATION

Modifications for Personal Income Tax and Minimum  
 Income Tax Purposes in Respect to Capital Gains

Chapter 103 of the Laws of 1981 amends various sections of the New York State Tax Law. This act was enacted on May 15, 1981 and these amendments are applicable to taxable years beginning on or after January 1, 1982. These amendments affect Personal Income Tax and Minimum Income Tax as follows:

Personal Income Tax

The amendments effectively do two things for Personal Income Tax purposes. It eliminates any capital gain modification where the Federal 1202 capital gains deduction remains at 60% or is reduced below 60%. If, pursuant to future Federal legislation, the Federal 1202 capital gains deduction should be increased to more than 60%, a plus modification would be required. This plus modification would be the excess of the 1202 deduction over 60%. (See examples below)

Minimum Income Tax

The amendments effectively do two things for Minimum Income Tax purposes. It effectively eliminates the subtraction from the Federal item of tax preference for capital gains where the Federal 1202 deduction (item of tax preference) remains at 60%. If, pursuant to future Federal legislation, the Federal 1202 capital gains deduction (item of tax preference) should be increased to more than 60%, a subtraction modification would be required. This subtraction modification would be the amount necessary to reduce the Federal items of tax preference to 60%. (See examples below)

Examples

The following examples illustrate when a modification would and would not be required:

- (a) A taxpayer has a net long term capital gain of \$100,000 and these gains are reportable at 40% (\$40,000) with 60% (\$60,000) as a Federal 1202 capital gains deduction. Since the deduction is 60%, no modification to Personal Income Tax or Minimum Income Tax is required.

	<u>Personal Income Tax</u> <u>Capital Gain</u>	<u>Minimum Income Tax</u> <u>Tax Preference</u>
Federal Amount	\$40,000	\$60,000
Modification	<u>0</u>	<u>0</u>
New York Amount	\$40,000	\$60,000

- (b) Same as (a) above except the gains are reportable at 50% (\$50,000) with 50% (\$50,000) as a Federal 1202 capital gains deduction. Since the deduction is less than 60%, no modification to Personal Income Tax or Minimum Income Tax is required.

	<u>Personal Income Tax</u> <u>Capital Gain</u>	<u>Minimum Income Tax</u> <u>Tax Preference</u>
Federal Amount	\$50,000	\$50,000
Modification	<u>0</u>	<u>0</u>
New York Amount	\$50,000	\$50,000

- (c) Same as (a) above except the gains are reportable at 30% (\$30,000) with 70% (\$70,000) as a Federal 1202 capital gains deduction. Since the deduction is more than 60% a modification of 10% (which is the excess over 60%), to Personal Income Tax and Minimum Income Tax is required.

	<u>Personal Income Tax</u> <u>Capital Gain</u>	<u>Minimum Income Tax</u> <u>Tax Preference</u>
Federal Amount	\$30,000	\$70,000
Modification	<u>+10,000</u>	<u>-10,000</u>
New York Amount	\$40,000	\$60,000

The sections of the New York State Tax Law and the Administrative Code of the City of New York affected by these amendments are 612(b)(11), 612(b)(16), 612(c)(4), 612(g)(6), 612(i), 622(b)(4), T46-112.0(b)(11), T46-112.0(b)(17), T46-112.0(c)(4), T46-112.0(g)(6), T46-112.0(i) and T46-122.0(b)(4).

This memorandum should be used in conjunction with TSB-M-78-(20)-I, dated December 22, 1978.