

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

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Summary of Legislative Changes Enacted in 2001

This memorandum contains brief summaries of the legislative changes enacted in 2001 that take effect in 2001 and after. The legislative changes described in this memo affect the following:

- Taxpayers' Bill of Rights
- Personal Income Tax
- Corporate Taxes
- Sales and Use Tax
- Cigarette and Tobacco Products Tax
- Boxing and Wrestling Exhibition Tax

Taxpayers' Bill of Rights

Disclosure of overpayments (Article 41)

The Tax Law has been amended to add new section 3004-a, entitled *Disclosure of Overpayment to Taxpayer*, to the Taxpayers' Bill of Rights (Art. 41). Section 3004-a requires the Tax Department to disclose to a taxpayer any overpayment of tax by the taxpayer that is discovered by the Department during the course of an audit, assessment, collection or enforcement proceeding. The taxpayer has 120 days from the date the Department provides a notice of disclosure to apply for a refund or claim a credit. If the taxpayer does not apply within the 120-day period, the taxpayer loses the right to apply for the refund or credit, unless another provision of law provides for a later period within which to apply. Finally, section 3004-a makes clear that its provisions do not require or permit the giving of notice, the payment of a refund, or the granting of a credit with respect to a period which, at the time the overpayment is discovered by the Department, is not open for assessment or refund due to any period of limitations provided for by the Tax Law. Section 3004-a took effect September 19, 2001.

(Tax Law, Section 3004-a.)

Personal Income Tax

New York City additional tax rate reduction

The New York City additional personal income tax on residents, imposed under section 11-1704.1 of the Administrative Code of the City of New York, has been reduced to 5.25% on certain

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levels of taxable income. The reduction applies to taxable years beginning on or after January 1, 2001, and before January 1, 2002. For additional information, including a table of the applicable rates, see TSB-M-01(3)I.

(Tax Law, section 1304-B; Administrative Code of the City of New York, section 11-1704.1.)

New York City personal income tax rates for residents

The New York City personal income tax rates for residents, imposed under section 11-1701(a) of the Administrative Code of the City of New York, the 14% additional tax imposed under section 11-1704.1 of the Code, and the 2.85% minimum income tax imposed under section 11-1702 of the Code, have been extended for tax years beginning before January 1, 2004. As a result of the extensions, the New York City combined tax rate schedules for the regular tax and the additional tax for tax years beginning on or after January 1, 2002, and before January 1, 2004, are as follows:

Married filing jointly and qualifying widow(er)

If the city taxable income is:	The tax is:
Not over \$21,600.....	2.907% of the city taxable income
Over \$21,600 but not over \$45,000.....	\$628 plus 3.534% of the excess over \$21,600
Over \$45,000 but not over \$90,000.....	\$1,455 plus 3.591% of the excess over \$45,000
Over \$90,000.....	\$3,071 plus 3.648% of the excess over \$90,000

Single, married filing separately, and estates and trusts

If the city taxable income is:	The tax is:
Not over \$12,000.....	2.907% of the city taxable income
Over \$12,000 but not over \$25,000.....	\$349 plus 3.534% of the excess over \$12,000
Over \$25,000 but not over \$50,000.....	\$808 plus 3.591% of the excess over \$25,000
Over \$50,000.....	\$1,706 plus 3.648% of the excess over \$50,000

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Head of household

If the city taxable income is:	The tax is:
Not over \$14,400.....	2.907% of the city taxable income
Over \$14,400 but not over \$30,000.....	\$419 plus 3.534% of the excess over \$14,400
Over \$30,000 but not over \$60,000.....	\$970 plus 3.591% of the excess over \$30,000
Over \$60,000.....	\$2,047 plus 3.648% of the excess over \$60,000

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

City of Yonkers personal income tax surcharge on residents and nonresident earnings tax

The Yonkers personal income tax surcharge on residents and nonresident earnings tax have been extended through taxable years ending on or before December 31, 2003. The Yonkers resident income tax surcharge will remain at the current rate of 5% of the net state tax. The city of Yonkers nonresident earnings tax, imposed on the wages earned and net earnings from self-employment of nonresident individuals, estates and trusts, will remain at the current rate of .25%.

(Tax Law, section 1321; Local Law 10-2001 of the City of Yonkers)

Qualified long term-care insurance

New York State Tax Law, section 612(c)(31), provides a subtraction modification in computing New York adjusted gross income for premiums paid for qualifying long-term care insurance. The subtraction is limited to the amount determined under section 213(d)(10) of the Internal Revenue Code.

Two significant changes have been made affecting taxpayers who pay for premiums for qualifying long-term care insurance:

- The definition of a qualifying long-term care insurance policy has been expanded for tax years beginning on or after January 1, 2001.
- The subtraction modification is replaced by a long-term care insurance credit for tax years beginning on or after January 1, 2002.

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Definition of a qualifying long-term care insurance policy

For taxable years beginning before 2001, a qualifying long-term care insurance policy was one that was:

- approved by the New York State Superintendent of Insurance (pursuant to section 1117(g) of the Insurance Law); **and**
- a qualified long-term care insurance contract pursuant to section 7702B of the Internal Revenue Code. (Note: Section 7702B relates to policies for which a federal itemized deduction is allowed.)

Effective for taxable years beginning on or after January 1, 2001, section 1117(g) of the Insurance Law was amended to provide that premiums paid by the taxpayer under a group insurance policy for long-term care will also qualify for the subtraction modification if it meets the following two conditions:

- the policy is issued or situated outside New York State; **and**
- the policy is a qualified long-term care insurance contract under section 7702B of the Internal Revenue Code.

The premiums paid by the taxpayer for this insurance qualify for the subtraction modification even if the policy is not approved by the New York State Superintendent of Insurance.

Subtraction modification replaced with long-term care insurance credit

Effective for taxable years beginning on or after January 1, 2002, the subtraction modification is repealed and replaced with the long-term care insurance credit. The credit is equal to 10% of the premiums paid during the taxable year for qualifying long-term insurance policies. Policies that qualify for the credit include all those that qualified in tax year 2001 for the subtraction modification. The credit is not refundable for personal income taxpayers, however, any unused credit can be carried over to future years.

The credit is also available to employers who pay premiums for qualifying policies for their employees. For information regarding the credit available to corporate employers, see page 5, *Qualified long-term care insurance credit (Articles 9, 9-A, 32 and 33)* in the *Corporate Taxes* section of this memorandum.

(Tax Law, sections 612(c)(31), 606(aa); Administrative Code of the City of New York, section 11-712(c)(31); and Insurance Law, section 1117(g).)

Corporate Taxes

MCTD Surcharge extender (Articles 9, 9-A, 32 and 33)

The Metropolitan Commuter Transportation District (MCTD) tax surcharges imposed under Articles 9, 9-A, 32 and 33 of the Tax Law have been extended for taxable years ending prior to December 31, 2005. The surcharge on the tax on gas importation (Section 189-a) is extended through taxable months ending on or before June 30, 2005.

Bank tax extender (Article 32)

The tax provisions that were scheduled to expire for tax years beginning on or after January 1, 2001, have been extended for two years.

Qualified long-term care insurance credit (Articles 9, 9-A, 32 and 33)

In 2000, the Tax Law was amended to provide a credit equal to 10% of the premiums paid during the tax year for the purchase of qualifying long-term care insurance. The credit is available for tax years beginning on or after January 1, 2002, and applies to most taxes and fees imposed under Articles 9 (Corporation Tax), 9-A (Franchise Tax on Business Corporations), 32 (Franchise Tax on Banking Corporations) and 33 (Franchise Tax on Insurance Corporations) of the Tax Law.

As originally enacted, a qualifying long-term care insurance policy was one that was

- approved by the New York State Superintendent of Insurance (pursuant to section 1117(g) of the Insurance Law); **and**
- a qualified long-term care insurance contract pursuant to section 7702B of the Internal Revenue Code. (Note: Section 7702B relates to policies for which a federal itemized deduction is allowed.)

Section 1117(g) of the Insurance Law was amended to provide that premiums paid by the taxpayer under a group insurance policy for long-term care will also qualify for the credit if it meets the following two conditions:

- the policy is issued or situated outside New York State; **and**
- the policy is a qualified long-term care insurance contract under section 7702B of the Internal Revenue Code.

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The premiums paid by the taxpayer for this insurance qualify for the credit even if the policy is not approved by the New York State Superintendent of Insurance.

(Tax Law, sections 190, 210.25-a, 1456(k), and 1511(m); and Insurance Law, section 1117(g))

Transitional provisions for the federal Gramm-Leach-Bliley Act extended and modified (Articles 9-A and 32)

Article 32 (Franchise Tax on Banking Corporations) of the Tax Law was amended by Chapter 63 of the Laws of 2000 to provide transitional rules relating to the enactment and implementation of the federal Gramm-Leach-Bliley Act. This act repealed some provisions of the federal Glass-Steagall Act, which prevented the affiliation of banks, securities firms and insurance companies. Under the Gramm-Leach-Bliley Act, a new entity was created called a financial holding company (FHC) that can own banks, insurance companies and securities firms. As a result of this legislation, the Tax Law was amended in 2000 to allow certain corporations that were taxed under Article 9-A (Franchise Tax on Business Corporations) or Article 32 in 1999, to retain their tax status in 2000. These transitional provisions, which were scheduled to expire for taxable years beginning on or after January 1, 2001, have been extended for two more years, as explained below.

In addition, section 1452(h)(1) of Article 32 was amended to clarify that taxpayers that made the one-time election to remain taxable under Article 9-A, pursuant to section 1452(d) (the “grandfather election”), retain the authority to revoke that election.

Finally, the combined reporting requirements in the transitional provisions were extended and clarified. The combined reporting requirements are further explained at the end of this section.

Transitional provisions have been extended

Article 32 of the Tax Law was amended by adding section 1452(i), extending the transitional provisions provided by Tax Law section 1452(h) for FHCs to taxable years beginning on or after January 1, 2001, and before January 1, 2003.

A banking corporation that was in existence before January 1, 2001, and was subject to tax under Article 32 during 2000, shall remain taxable under Article 32 for all taxable years beginning on or after January 1, 2001, and before January 1, 2003. A corporation that is not a taxpayer, which was properly included in an Article 32 combined report for a tax year, will be considered, for purposes of this transition provision, to be subject to tax under Article 32 for that tax year.

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A banking corporation that was in existence before January 1, 2001, but first became a taxpayer in the period January 1, 2001, through December 31, 2002, will be subject to tax under Article 32 if it would have been taxable under Article 32 in its last taxable year beginning before January 1, 2001.

A corporation that was in existence before January 1, 2001, and was subject to tax under Article 9-A during 2000, shall remain taxable under Article 9-A for all taxable years beginning on or after January 1, 2001, and before January 1, 2003. A corporation that is not a taxpayer, which was properly included in an Article 9-A combined report for a tax year, will be considered, for purposes of this transition provision, to be subject to tax under Article 9-A for that tax year.

A corporation that was in existence before January 1, 2001, but first became a taxpayer in the period January 1, 2001, through December 31, 2002, will be subject to tax under Article 9-A if it would have been taxable under Article 9-A in its last taxable year beginning before January 1, 2001.

A corporation formed on or after January 1, 2001, and before January 1, 2003, may elect to be subject to tax under Article 32 or Article 9-A for its first taxable year beginning on or after January 1, 2001, and before January 1, 2003, in which either it:

- is a financial subsidiary; **or**
- meets both of the following requirements:
 - < 65% or more of the corporation's voting stock is owned or controlled, directly or indirectly, by a FHC; **and**
 - < the corporation is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal Bank Holding Company Act of 1956 (12 USCS sections 1843(k)(4) and (5)), as amended, or described in any regulations or orders promulgated under the authority of that section.

The corporation must make the election on or before the due date for filing its franchise tax return (with regard to any extension of time for filing). The election is made by filing a franchise tax return under Article 32 or Article 9-A for the tax year. The election is irrevocable.

Under the Tax Law, a *financial holding company (FHC)* is defined as a corporation that has filed a written declaration with the Federal Reserve Board under subsection (l) of section 4 of the federal Bank Holding Company Act of 1956 (12 USCS section 1843(l)), that the corporation elects to be a financial holding company and whose election has not been found to be ineffective by the Federal Reserve Board.

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A *financial subsidiary* is a corporation (1) whose voting stock is 65% or more owned or controlled, directly or indirectly, by (i) a corporation or association organized under the laws of New York that is either authorized to do a banking business or which is doing a banking business, (ii) a corporation or association organized under the laws of another state or a foreign country that is doing a banking business, or (iii) a national banking association organized under the authority of the United States that is doing a banking business, and (2) which is described in Section 5136A(g) of the Revised Statutes of the United States (12 USC Section 24a) or Section 46 of the Federal Deposit Insurance Act (12 USC section 1831w)

(Tax Law, section 1452(i))

Transitional provisions for combined filers clarified and extended

A qualifying bank holding company (BHC) may elect to file a combined return with any banking corporation for the first taxable year beginning on or after January 1, 2000, and before January 1, 2003. All three of the following conditions must be met:

- in such first taxable year, the BHC becomes a FHC by registering as a bank holding company under the federal Bank Holding Company Act of 1956, as amended, and electing to become a FHC;
- the voting stock of the banking corporation is 65% owned or controlled, directly or indirectly, by the BHC; **and**
- both companies are exercising their corporate franchise or doing business in New York State.

Where the above conditions have been met, the Tax Department will have no discretion to challenge or disallow such combined reporting.

For each subsequent taxable year beginning after January 1, 2000 and before January 1, 2003, a BHC that qualified above, may add to the combined group, or file a combined return with any banking corporation that is exercising its corporate franchise or doing business in New York State and whose voting stock is owned or controlled directly or indirectly, by the bank holding company if either:

- the banking corporation is exercising its corporate franchise or doing business in New York State for the first time during such subsequent taxable year, **or**
- 65% or more of the voting stock of the banking corporation is owned or controlled, directly or indirectly, by the BHC for the first time during such subsequent taxable year.

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The Tax Department may not require a BHC to file a combined return for any taxable year beginning on or after January 1, 2000, and before January 1, 2003, with a banking corporation whose voting stock is 65% or more owned or controlled, directly or indirectly, by the BHC, if the BHC, during a taxable year beginning on or after January 1, 2000, and before January 1, 2003, registers for the first time under the federal Bank Holding Company Act of 1956, as amended, and makes an election to be a FHC.

Once corporations as described above file on a combined or separate basis, the Tax Department will have the discretion to challenge or disallow a change to that filing status.

These legislative changes were also made to the Banking Corporation Franchise Tax provisions of the Administrative Code of the City of New York.

(Tax Law, section 1462(f)(2)(iv))

Natural Gas Import Tax Credit (Article 9, sections 189 and 189-a.3)

Sections 189 (Privilege Tax on Importation of Gas Services for Consumption) and 189-a.3 (Temporary Metropolitan Transportation Tax Surcharge on Gas Importers) of Article 9 of the Tax Law have been amended to allow a credit for a tax imposed by another jurisdiction which is like the tax that was imposed by Tax Law, section 186. The credit is for a section 186-like tax that was paid for taxable months beginning on or after August 1, 1991, and before January 1, 2000. The amendments to Article 9, sections 189 and 189-a.3, take effect immediately and do not affect the scheduled repeal of those sections effective January 1, 2005.

Section 189 was intended as a compensating tax for the section 186 and 186-a taxes imposed on in-state purchases of natural gas. Section 186 was repealed by chapter 63 of the Laws of 2000 for tax years ending after January 1, 2000. With the repeal of section 186 of the Tax Law, section 189 ceased to compensate for the tax imposed under section 186, but continues to compensate for the tax under section 186-a.

Section 189 of Article 9 of the Tax Law imposes a tax on importers of natural gas with the intention of treating consumers of natural gas equally, whether they purchase gas inside or outside of New York State. Prior to the enactment of section 189, persons importing natural gas from outside New York State for their own use within the state escaped the burden of the taxes imposed under section 186-a and former section 186 of the Tax Law.

Recently, in Tennessee Gas Pipeline Company v. Urbach (96 N.Y.2d 124, 750 N.E.2d 52, 726 N.Y.S.2d 350, 2001 N.Y. LEXIS 1109 May 01, 2001), the New York Court of Appeals found the section 189 tax unconstitutional because it did not provide for a credit for a section 186-like tax that theoretically could have been imposed on the gas by another state or other jurisdiction. That is,

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there was a theoretical possibility that a taxpayer purchasing natural gas outside New York State and importing for use in New York State would be subject to higher taxes than one who purchased natural gas within the state. This theoretical possibility commenced on August 1, 1991, the date the section 189 took effect, and ended on December 31, 1999, since section 186 was repealed as of January 1, 2000.

The new credit is equal to the amount of section 186-like taxes paid to another jurisdiction that were:

- imposed on the imported gas;
- paid by the taxpayer or were passed through and absorbed by the taxpayer;
and
- for taxable months beginning on or after August 1, 1991, and before January 1, 2000.

The credit cannot reduce the tax to an amount less than zero and the credit cannot be used to reduce the amount of the section 189 tax that compensates for the section 186-a tax.

New York State surcharge

The credit effectively reduces the New York State tax surcharge imposed by section 189-b because the state surcharge is calculated by multiplying the amount of the section 189 tax after the application of the credit by the surcharge rate.

Additional credit allowed against the MCTD tax surcharge

An additional credit for former section 186-like taxes paid to another jurisdiction is allowed against the Metropolitan Commuter Transportation District (MCTD) tax surcharge imposed under section 189-a of the Tax Law. The amount of this credit is equal to 17% of the portion of the section 189 credit that represents importations into the MCTD.

How to claim the credit

A claim for the credit (refund or reimbursement) can be filed for taxable months that are open under the statute of limitations. The credit may be claimed on Schedule D of Form CT-189-WR, *Claim for Refund of Section 189 Tax and Tax Surcharges*. Any refund claim submitted by a taxpayer that was a gas importer and that, pursuant to section 149-b of Chapter 166 of the laws of 1991, was reimbursed the amount of tax under sections 189, 189-a, or 189-b of the Tax Law by an electric corporation, will be directly paid to the electric corporation. The electric corporation is required, in turn, to reflect this refund in computing rates for non-residential customers who were ultimately required to bear the cost of the section 189 tax.

(Tax Law, sections 189.7 and 189-a.3)

Sales and Use Tax

Limited Liability Companies May Qualify as Sales Tax Exempt Organizations

Section 1116(a)(4) of Article 28 (Sales and Compensating Use Taxes) of the Tax Law has been amended to clarify that limited liability companies (LLCs) are organizations that may qualify as exempt organizations for sales and use tax purposes, if the LLC is formed for a qualifying exempt purpose. This amendment took effect September 5, 2001.

(Tax Law, section 1116(a)(4))

Cigarette and Tobacco Products Tax

Annual Certifications and Prohibition Against the Stamping of Certain Cigarettes

Article 20 (Tax on Cigarettes and Tobacco Products) of the Tax Law has been amended to add new section 480-b. This new provision subjects cigarette manufacturers to an annual certification requirement and prohibits cigarette agents from stamping certain cigarettes. In addition, the Tax Law is amended to provide for civil penalties and the seizure of cigarettes for violation of these new provisions. All cigarette manufacturers must make their first certification by December 28, 2001. For a detailed explanation of these statutory changes, please see TSB-M-01(7)M, *Cigarette Manufacturer Certifications and Prohibition Against the Stamping of Certain Cigarettes*.

(Tax Law, section 480-b)

Boxing and Wrestling Exhibitions Tax

Time for Filing Return and Remitting Tax on Gross Receipts From Ticket Sales Extended

Article 19 (Boxing and Wrestling Exhibitions Tax) of the Tax Law has been amended to extend from 48 hours to 10 days the time within which a promoter of a boxing or wrestling match or exhibition has to file a return and remit the gross receipts tax from ticket sales. For additional information, see TSB-M-01(6)M, *Time to File and Pay Boxing and Wrestling Exhibitions Tax on Gross Receipts From Ticket Sales Extended*.

(Tax Law, section 453.1 and 453.2)