

SUBSTANCE OF THE PROPOSED RULE

DEPARTMENT OF TAXATION AND FINANCE

This rule updates the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I; the Franchise Tax on Banking Corporations Regulations, as published in Subchapter B of Chapter I; the Corporate Tax Procedure and Administration Regulations, as published in Subchapter D of Chapter I; the Cigarette Tax, Cigarette Marketing Standards and Tobacco Products Tax Regulations, as published in Subchapter I of Chapter I; the New York State Personal Income Tax Under Article 22 of the Tax Law Regulations, as published in Subchapter A of Chapter II; the Motor Fuel and Diesel Motor Fuel Tax Regulations, as published in Subchapter A of Chapter III; the Truck Mileage and Fuel Use Taxes Regulations, as published in Subchapter C of Chapter III; the Sales and Use Taxes Regulations, as published in Subchapter A of Chapter IV; the Real Estate Transfer Tax Regulations, as published in Subchapter B of Chapter IV; and the Procedural Regulations, as published in Chapter IX of Title 20 of NYCRR. As explained in the Statement of Consensus Rule Making Determination that is being filed with this rule, Part 2393 of the Procedural Regulations sets the overpayment and underpayment rates of interest for periods prior to September 1, 1989. Chapter 61 of the Laws of 1989 amended the Tax Law (and other applicable laws) to prescribe by statute the methods for determining the overpayment and underpayment rates of interest and to provide that such rates are to be published quarterly in the section for miscellaneous notices of the *State Register* without promulgation by regulation. Part 2393, with the exception of section 2393.1(e)(1), is now obsolete and is being repealed. Section 2393.1(e)(1), which reflects the 1989 statutory changes, is being retained and technically updated.

Accordingly, sections 1, 2, 3, 6, 7, 8, 11, 12, 15, 18, 19, 20, 26, 27, 28, and 32 of the rule amend sections 7-3.7, 22-3.7, 38.2, 78.5(b), 185.3(a)(1), 415.6(a), 416.6(b), 487.4, 488.4(b) and (c), 536.1(b), 536.1(c), 536.1(d), 561.10(e)(4), 575.16(d), 575.20(b), and 2397.7(b)(1) of the regulations, respectively, to delete

erroneous and dated information, including specific references to Part 2393 that no longer apply, and to reference pertinent sections of the Tax Law.

Sections 4 and 5, 9 and 10, 13 and 14, as well as section 23 of the rule update sections 78.3, 416.4, 488.3, and 536.3 of the regulations, respectively, to reflect the new statutory computation of the civil penalty charges for fraud in accordance with Subpart J of Part V-1 of Chapter 57 of the Laws of 2009.

Section 16 of the rule amends paragraph (2) of subdivision (e) of section 534.2 of the regulations, and section 17 of the rule repeals paragraph (3) of such subdivision. Much of the information in these paragraphs is out of date, and both paragraphs are incomplete in so far as they do not incorporate all of the current interest allowances and limitations provided in Articles 28 and 29 of the Tax Law.

Section 21 of the rule repeals subdivision (f) of section 536.1 of the regulations because this subdivision is dated and misplaced. That is, interest on overpayments is not relevant to “[p]enalties and interest” on underpayments.

Section 22 of the rule makes technical amendments to the heading of section 536.2 of the regulations to better reflect the penalty imposed by section 1145(a)(1)(vi) of the Tax Law. Interest is not a component of this penalty and should not be mentioned in this regulation.

Section 24 of the rule adds a new section 536.4 to the regulations to reference section 1145 and Article 37 of the Tax Law for information concerning additional penalties.

Section 25 of the rule repeals dated and incomplete section 536.6 of the regulations, which information is accounted for in new section 536.4, as added by section 24 of the rule.

Sections 29 and 30 of the rule repeal obsolete provisions of Part 2393 of the regulations regarding interest rates and update the remaining provisions.

Section 31 of the rule repeals obsolete subdivisions (a), (b), (c), and (e) of section 2395.1 of the

regulations and updates subdivision (d) to correct the reference to Part 2393 of the regulations and to reference the applicable section of the New York State Real Property Tax Law.

Editorial and technical changes have also been made throughout these sections of the regulations.